

VOL. VIII

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-vs-

10-CR-219S

TONAWANDA COKE CORPORATION
MARK L. KAMHOLZ,

Defendants.

Proceedings held before the

Honorable William M. Skretny, U.S.

Courthouse, 2 Niagara Circle, Buffalo,

New York on March 8, 2013.

APPEARANCES:

AARON J. MANGO,
Assistant United States Attorney,
ROCKY PIAGGIONE, Senior Counsel,
U.S. Department of Justice,
Appearing for the United States.

GREGORY F. LINSIN, ESQ.,
ARIEL S. GLASNER, ESQ.,
Appearing for Tonawanda Coke Corporation.

RODNEY PERSONIUS, ESQ.,
Appearing for Mark L. Kamholz.

Also Present: Lauren DiFillipo, Paralegal
Sheila Henderson, Paralegal

Michelle L. McLaughlin, RPR,
Official Reporter,
U.S.D.C. W.D.N.Y.
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1 (Jury not present in the courtroom.)

2 THE COURT: Miss Demma, would you call the
3 case, please.

4 THE CLERK: Criminal case 2010-CR-219S,
5 United States versus Tonawanda Coke and Mark
6 Kamholz.

7 THE COURT: Okay. And the attorneys and
8 parties are back present. I know the jury's all
9 assembled and ready to go. Is there anything that
10 we have to discuss? I think there are no real
11 issues but there's, Mr. Piaggione, something to
12 call to my attention.

13 MR. PIAGGIONE: Yes, your Honor.
14 Yesterday you asked us -- we had this discussion
15 about eliminating some of the witnesses from the
16 witness list, and I just -- we've given that list
17 to the defense. I thought perhaps you wanted to
18 make a note of it as well. I have the names if you
19 want to eliminate them or how would you --

20 THE COURT: All right. Do me a favor. If
21 you have them, would you give whatever that sheet
22 is that you have the names on, and I'll take that
23 and I'll add it to my records and we'll go from
24 there. Okay?

25 MR. PIAGGIONE: Very good.

1 THE COURT: That way we can get right
2 started with the jury.

3 Is there anything else?

4 MR. LINSIN: No, nothing from Tonawanda.
5 Thank you, your Honor.

6 MR. PERSONIUS: No, your Honor.

7 THE COURT: Okay. Who is your witness
8 today?

9 MR. MANGO: Your Honor, we do have a very
10 quick witness, Kevin Neely, who I figured, before
11 we get into the long witness, we might as well do
12 Mr. Neely and let him enjoy the rest of the day.

13 THE COURT: Okay. All right.

14 MR. MANGO: Defense is aware of that.

15 THE COURT: Okay. Okay. We'll do that.
16 Chris, if you get the jury, please.

17 Does anybody object to the fact that it's
18 Friday?

19 (Jury seated.)

20 THE COURT: You are a little more colorful
21 this morning. Good morning. Good to see
22 everybody. Please have a seat, please.

23 Okay. Good to have our jury back. And it's
24 also good to have a Friday in this week. So, we're
25 about ready to start as you can tell. The

1 attorneys and parties are back ready, and again, I
2 reemphasize for you -- and I know you know because
3 you've been very cooperative, and we really do
4 appreciate that. This is an important case to both
5 sides. So, the government has that burden of
6 proof, and it's ready with its next witness.

7 Please keep your minds open. Again, everything
8 that you're going to need to decide this case
9 unanimously you will be getting from the witnesses,
10 or the lack thereof, and the other evidence that's
11 received. And, you know, we ask you please don't
12 do anything to in any way negatively impact on your
13 objectivity in this case. Keep your minds open.
14 You know it's going to depend on resolving those
15 fact issues on the application of your common
16 sense, your experience, and your intelligence to
17 getting the job done unanimously. So, again, thank
18 you.

19 I think, Mr. Mango, is the first witness yours?

20 MR. MANGO: Yes, your Honor.

21 THE COURT: Okay. If you call your
22 witness, please.

23 MR. MANGO: Yes, your Honor. I did
24 mention we'd have a long witness. I would like to
25 do a short witness before that, Mr. Kevin Neely.

1 THE COURT: We're going to hold you to
2 your word, Mr. Mango, on this one. Okay. All
3 right.

4 All right. Mr. Neely, if you'd just move up a
5 little bit, stop right there, and Miss Demma is
6 going to administer the oath. If you would just
7 sort of turn around a little bit and face the jury.
8 K E V I N E. N E E L Y, having been duly sworn as
9 a witness, testified as follows:

10 THE COURT: Okay. Good norming.

11 THE WITNESS: Morning.

12 THE COURT: All right. You do have the
13 distinction before I give you the preliminary
14 instructions of being the only one introduced as a
15 short witness in this case so far. So we hope that
16 plays out. But, keep in mind that you are here in
17 this important case to testify for the benefit of
18 the ladies and gentlemen of the jury.

19 And that requires that you do a couple of
20 things, because my court reporter has to take down
21 everything you say, and the jury has to hear you so
22 please speak at the microphone. It's friendly, but
23 you have to speak in a conversational tone. You
24 don't have to get right on top of it. You have to
25 stay back a little bit, but you have to keep your

1 voice up.

2 If you don't understand a question, let
3 whoever's asking the question know. Don't answer a
4 question you don't understand. Be as concise as
5 you can. If you can answer a question yes or no,
6 please do that. If there's an objection, wait
7 until I rule on the objection, and I'll tell you
8 whether to complete an answer, or wait for another
9 question.

10 Do you understand those instructions?

11 THE WITNESS: Yes, I do.

12 THE COURT: Okay. I think you'll carry
13 okay. Would you state your full name and spell
14 your last name, please?

15 THE WITNESS: Kevin E. Neely, N-E-E-L-Y.

16 THE COURT: Okay. Your witness,
17 Mr. Mango.

18 MR. MANGO: Thank you, your Honor.

19 DIRECT EXAMINATION BY MR. MANGO:

20 Q. Good morning, Mr. Neely.

21 A. Good morning.

22 Q. Are you currently employed?

23 A. No, I'm not.

24 Q. All right. Have you ever been employed at the
25 Tonawanda Coke Corporation?

1 A. Yes.

2 Q. What period of time, if you can tell the jury,
3 were you employed at Tonawanda Coke Corporation?

4 A. August 28th 1995 to February 28th, 2013.

5 Q. Okay. Can you tell the jury what positions
6 you've held at the Tonawanda Coke Corporation?

7 A. Pusher operator, door machine, quench car
8 operator, by-products operator.

9 Q. Okay. Let's talk about by-products.

10 Do you recall the year or the years you worked
11 in the by-products department?

12 A. Between 2004 to '06.

13 Q. Okay. 2004 to 2006?

14 A. Yes.

15 Q. So at some point did you leave the by-products
16 area?

17 A. Yes, I did.

18 Q. For a different position?

19 A. Yes.

20 Q. Why did you leave by-products?

21 A. The smell. Couldn't deal with the smell.

22 Q. Okay. You mentioned you were employed up until
23 February 28th of 2013.

24 A. Yes.

25 Q. About a week ago?

1 A. Yes.

2 Q. Under what terms did you leave the Tonawanda
3 Coke Corporation?

4 A. I got into an argument with one of the
5 supervisors and was suspended and then terminated.

6 Q. Okay. Let me show you exhibit -- already in
7 evidence, your Honor -- 15.02.097.

8 Mr. Neely, I'm going to ask you to take a look
9 at your screen. Do you see that on your screen?

10 A. Yes, I do.

11 Q. Okay. What is this that we're looking at?

12 A. The bleeder.

13 Q. Are you familiar with the operation of this
14 bleeder?

15 A. Yes.

16 Q. As part of your employment as a by-products
17 operator, did you have -- you were an operator when
18 you were in by-products?

19 A. Yes.

20 Q. All right. I'm sorry. As part of your
21 employment as a by-products operator, did you have
22 any responsibilities regarding the operation of
23 this bleeder?

24 A. Yes.

25 Q. Okay. Tell the jury, please, what -- what you

1 had to do.

2 A. As operator you supposed to check it every two
3 hour round.

4 Q. Okay. And you would check it during your
5 two-hour rounds?

6 A. Yes.

7 Q. During the time period you were in the
8 by-products department, was this operational?

9 A. Yes, it was.

10 Q. And when it was operational, what, if anything,
11 would come out of this bleeder?

12 A. Gas.

13 Q. When would gas come out of this bleeder?

14 A. During reversal.

15 Q. Have you seen it happen?

16 A. Yes.

17 Q. When it would release gas, would you smell
18 anything?

19 A. Yes.

20 Q. Okay. Tell the jury what you would smell.

21 A. Gas.

22 Q. All right. When it will release, would you
23 feel anything?

24 A. Yes.

25 Q. All right. Tell the jury what you would feel.

1 A. A mist. You feel a mist on you when you walk
2 by.

3 Q. Okay. For the releases, how long would they
4 last?

5 A. Up to a minute.

6 Q. Do you know what the typical set point for this
7 bleeder was?

8 A. Between 80 to 100.

9 Q. Who decided where the bleeder would be set at?

10 A. Supervisor.

11 Q. Did you ever make any changes to the set point
12 of this bleeder?

13 A. No.

14 Q. If a change was made, was it recorded anywhere?

15 A. Yes.

16 Q. Okay. Were you trained to put any adjustments
17 you would make as a by-products operator in any
18 type of book?

19 A. Yes.

20 Q. Okay. Do you know what drip legs are,
21 Mr. Neely?

22 A. Yes, I do.

23 Q. While you were in by-products, did you ever
24 find any of those drip legs cracked open?

25 A. Yes.

1 Q. Can you tell the jury what -- when you found
2 those cracked open, what would be coming out of
3 them?

4 A. Liquid. A liquid.

5 Q. Okay. Anything else?

6 A. And gas.

7 MR. MANGO: Thank you, your Honor. No
8 further questions.

9 Thank you, Mr. Neely.

10 THE WITNESS: Thank you.

11 THE COURT: Okay, Mr. Neely. Thank you.

12 Mr. Linsin.

13 MR. LINSIN: Thank you, your Honor. May I
14 proceed?

15 THE COURT: Yes.

16 CROSS-EXAMINATION BY MR. LINSIN:

17 Q. Good morning, Mr. Neely.

18 A. Good morning.

19 Q. My name is Greg Linsin. I represent Tonawanda
20 Coke Corporation.

21 You were asked about the drip legs that are in
22 the by-products area, and you testified that
23 sometimes you found them cracked open, correct?

24 A. Yes.

25 Q. All right. Now, were the drip legs another one

1 of the items that you routinely inspected during
2 these two-hour rounds you did in by-products?

3 A. Yes.

4 Q. All right. And the standard procedure for
5 those drip legs was that they were to be kept
6 closed, correct?

7 A. Yes.

8 Q. And so when in the exceptional circumstance you
9 might find one of them open, you were trained to
10 close it, correct?

11 A. Correct.

12 Q. Because you knew they were supposed to be
13 closed?

14 A. Yes.

15 Q. Did you ever operate a front-end loader
16 operator out at the plant, sir?

17 A. No.

18 Q. And you testified that you operated a quench
19 car, I believe.

20 A. Yes.

21 Q. What period of time did you do that?

22 A. Can't recall.

23 Q. You don't remember?

24 A. Don't remember.

25 Q. Do you know if it was during the 2005, 2009

1 period, or would it have been some other time?

2 A. Some other time.

3 Q. Let me ask you this: Do you remember -- there
4 are two quench towers at the plant, correct?

5 A. Correct.

6 Q. And one of them is a shorter tower over on the
7 east side of the property, closer to the ovens,
8 correct?

9 A. Yes.

10 Q. And there's another taller tower over closer to
11 the river that's further away from the ovens,
12 correct?

13 A. Yes.

14 Q. Do you remember a time when that taller
15 tower -- the one that's further away, the one
16 that's closer to the river, do you remember a time
17 when that tower was actually shut down and the
18 quench cars couldn't go to that tower?

19 A. No.

20 Q. Do you remember a time when they actually put
21 rail guards on the rails so the quench cars
22 couldn't move down there?

23 A. No.

24 Q. You don't remember that?

25 A. Don't remember.

1 Q. Okay.

2 MR. LINSIN: I have nothing further, your
3 Honor.

4 THE COURT: All right. Mr. Linsin, thank
5 you.

6 Mr. Personius.

7 CROSS-EXAMINATION BY MR. PERSONIUS:

8 Q. Morning, Mr. Neely.

9 A. Good morning.

10 Q. My name a Rod Personius. I represent Mark
11 Kamholz.

12 Mark, would you stand up, please?

13 Do you recognize Mr. Kamholz?

14 A. Yes.

15 MR. PERSONIUS: Your Honor, if the record
16 could reflect, please, that --

17 THE COURT: Yeah. The record will show
18 that the defendant Mark Kamholz has been identified
19 by Mr. Neely.

20 BY MR. PERSONIUS:

21 Q. Mr. Neely, how tall are you?

22 A. About five-eight.

23 Q. Would you consider that short? I'm just trying
24 to figure out if you're a short witness, that's why
25 I asked.

1 THE COURT: All right.

2 MR. PERSONIUS: I'll continue, Judge.

3 THE COURT: Is there a motion to strike?

4 No.

5 MR. MANGO: I think he's taken that a
6 little out of context but that's -- we can proceed,
7 your Honor.

8 THE COURT: Okay.

9 BY MR. PERSONIUS:

10 Q. You understand, right?

11 A. Yeah.

12 Q. Don't take it personally.

13 MR. MANGO: I'll choose my words carefully
14 next time.

15 BY MR. PERSONIUS:

16 Q. I just have a couple of questions, Mr. Neely.
17 You identified for Mr. Mango this pressure -- we
18 call it -- we've been calling it both a bleeder and
19 pressure relief valve.

20 Are you familiar with that term "pressure
21 relief valve"?

22 A. We always called it a bleeder.

23 Q. Okay. Did you ever hear it referred to as a
24 pressure relief valve?

25 A. No.

1 Q. We'll call it a bleeder. That instrument, can
2 you tell the jury where within the by-products area
3 that was located, please?

4 A. In the by-products.

5 Q. Okay. Maybe go at it this way. There is a
6 road that goes down through the -- the middle of
7 the -- of the property that's referred to as
8 Broadway?

9 A. Yes.

10 Q. Are you familiar with that -- that road?

11 A. Yes.

12 Q. And on one side of that road as you're -- if
13 you were heading away from the river -- in other
14 words going to the east, on one side to your left
15 would be by-products --

16 A. Yes.

17 Q. -- is that right? And then on your right-hand
18 side as you went down Broadway, you would have the
19 coal handling building and then the battery?

20 A. Yeah.

21 Q. Is that fair?

22 A. That's correct.

23 Q. Okay. Now, the -- did the by-products area
24 border on Broadway?

25 A. Yes.

1 Q. Okay. And if my directions are correct, then
2 by-products would be on the north side of Broadway?

3 A. Right.

4 Q. Okay. And this bleeder valve, where in
5 relation to Broadway was the -- was that valve?

6 A. On the north side.

7 Q. All right. It's on the north side of Broadway
8 but within the by-products area. Was it closer to
9 Broadway or was the --

10 A. It was closer to Broadway. Right at the
11 driveway there, right at the road.

12 Q. Right at the side of Broadway?

13 A. Yes.

14 Q. Okay. Do you remember about how high up in the
15 air the valve was?

16 A. No. Can't recall.

17 Q. And if you were -- the valve runs off of a big
18 pipe that's called the coke oven gas line?

19 A. Yes.

20 Q. Okay. And that coke oven gas line is -- is
21 that painted a certain color?

22 A. No.

23 Q. It doesn't have any color to it?

24 A. No.

25 Q. Okay. If you're looking up -- up in the air at

1 that coke oven gas line and you're standing on
2 Broadway, do you see the pressure relief valve?

3 A. No.

4 Q. At what point do you see the pressure relief
5 valve? Is there any perspective you can have where
6 you can actually see it?

7 A. You have to walk up on it.

8 Q. Pardon me?

9 A. You have to walk up on it, behind a little
10 shed. It's a little shack.

11 Q. There is a green shack that's down on the
12 ground, right?

13 A. Yes.

14 Q. And the pressure relief valve is above that?

15 A. Up above it, that's correct.

16 Q. And you mentioned when you talked to the
17 investigators that from time to time that valve
18 would get clogged up?

19 A. Don't remember.

20 Q. Do you remember telling the investigators that
21 there were times when you had to steam out the
22 valve?

23 A. Don't remember.

24 Q. That every couple of months you had to use
25 steam to clean out the valve? You don't remember

1 that?

2 A. No, I don't.

3 MR. PERSONIUS: Can I have just a minute,
4 Judge?

5 THE COURT: Yes.

6 BY MR. PERSONIUS:

7 Q. Mr. Neely, do you remember that you were
8 interviewed by an agent from the Environmental
9 Protection Agency and an agent from the Department
10 of Environmental Conservation in August of 2010?

11 A. Yes.

12 Q. Okay. And you were asked certain questions
13 about your work experience at Tonawanda Coke?

14 A. Yes.

15 Q. And you're telling us that you don't recall
16 telling those investigators about the need to steam
17 out the -- this what you refer to as the bleeder
18 valve every couple of months?

19 A. No.

20 Q. All right. Could we please, for
21 identification, Lauren, have Government
22 Exhibit 3550 put up on the screen.

23 Mr. Neely, there is a screen there that you're
24 looking at. Do you see in the upper right corner,
25 it's got a yellow sticker? Yes?

1 A. Yes.

2 Q. On that sticker it says 3550.01?

3 A. Yes.

4 Q. Right below that, it says Government Exhibit?

5 A. Yes.

6 Q. And what I'd like you to do, sir -- we're going
7 to take part of this so you can read it better and
8 we're going to make it bigger, so bear with us.

9 Now, there's a paragraph that we've made
10 bigger. My request is please read that to
11 yourself.

12 Have you read that?

13 A. Yes.

14 Q. Could you take it down, please, Lauren.

15 Now, Mr. Neely, having read that paragraph,
16 does that refresh your recollection?

17 A. Yes.

18 Q. Okay. And does it refresh your recollection
19 that you told the agents about having -- maybe I'm
20 not using the right words -- but steam out that
21 valve from time to time?

22 A. Yes.

23 Q. Okay. Would you tell the jury what you
24 remember about that process, please?

25 A. Normally, if you don't -- you don't see the

1 bleeder bleeding, it will be plugged, you know, be
2 clogged and you have to run the steam hose to it
3 and clear the line out.

4 Q. And when you -- when you -- well, would you do
5 this or did someone else at Tonawanda Coke do the
6 steaming?

7 A. Usually during the winter months --

8 Q. Okay.

9 A. -- we would have a problem with it.

10 Q. I see. And was that something that you as a
11 by-products operator would do; that is, would you
12 do the steaming or did some other unit at Tonawanda
13 Coke do the steaming?

14 A. Well, all the employees did -- the by-products
15 operators will have to.

16 Q. Would have to do it?

17 A. Yes.

18 Q. And you would somehow enter steam into the line
19 to clean out the valve?

20 A. Right. That's correct.

21 Q. All right. And when you did that, would that
22 cause whatever was clogged in the line to come out
23 of the valve?

24 A. Yes.

25 Q. And whatever was in the line, would it create

1 some type of a spray?

2 A. Yes.

3 Q. Okay. And do you know what it was that would
4 clog up the line?

5 A. Tar.

6 Q. Tar?

7 A. Tar most of the time.

8 Q. Okay. Would you actually then, if you saw --
9 if you think it was tar, would you actually see the
10 tar come out of the valve?

11 A. No.

12 Q. Okay. Have you ever heard of a substance
13 called naphthalene?

14 A. Yes.

15 Q. Do you know whether or not naphthalene would
16 sometimes clog up that valve?

17 A. Sometimes, yes.

18 Q. And then when you would steam it out, the clog
19 would come out of the valve?

20 A. Yes.

21 Q. And that would include the naphthalene?

22 A. Yes.

23 Q. And this was done mostly in the winter months?

24 A. Yes.

25 MR. PERSONIUS: May I have a minute,

1 please, Judge?

2 THE COURT: Certainly.

3 MR. PERSONIUS: Your Honor, we have
4 nothing further at this time.

5 Thank you, Mr. Neely.

6 THE WITNESS: Thank you.

7 MR. MANGO: Nothing further, your Honor.
8 Thank you.

9 THE COURT: Okay. Mr. Mango. Okay.
10 Mr. Neely, you're excused. Thank you very much.

11 THE WITNESS: Thank you.

12 THE COURT: Okay. Have a good day.

13 MR. MANGO: Your Honor, the government
14 would call Harish Patel.

15 THE COURT: Good morning. If you approach
16 the witness stand, please. Don't go in it. I'll
17 tell you when to stop. If you stop right there,
18 we're going ask you to face the jury, and we'll
19 have you sworn as a witness.

20 H A R I S H P A T E L, having been duly sworn as a
21 witness, testified as follows:

22 THE COURT: You'll have to speak at the
23 microphone in a conversational tone. It's
24 friendly, so it should pick you up. You don't have
25 to be right on top of it. Keep in mind that you're

1 here to testify for the benefit of the ladies and
2 gentlemen of the jury. If you don't understand a
3 question, make sure you ask the questioner to
4 repeat the question. Don't answer something you
5 don't understand, okay?

6 THE WITNESS: I understood.

7 THE COURT: Okay. If you can, answer a
8 question as succinctly as you are able. If you can
9 do it with a yes or no, please do it that way. The
10 attorneys should follow up with questions where
11 they want you to go.

12 If there's an objection, wait until I rule on
13 the objection, and then I'll give you instructions
14 on whether to continue with your answer, wait for
15 another question, or something along those lines.
16 Don't volunteer information, because that
17 complicates matters. Do you understand my
18 instructions?

19 THE WITNESS: Yes, I do.

20 THE COURT: All right. I think you're
21 going to carry okay. State your full name, spell
22 your last name, please.

23 THE WITNESS: My name is Harish Patel.
24 Last name is P-A-T-E-L.

25 THE COURT: Okay. Spell your first name

1 too, because it's a little unusual.

2 THE WITNESS: Harish, H-A-R-I-S-H.

3 THE COURT: All right. Thank you,
4 Mr. Patel.

5 Your witness, Mr. Mango.

6 MR. MANGO: Thank you, your Honor.

7 DIRECT EXAMINATION BY MR. MANGO:

8 Q. Good morning, Mr. Patel.

9 A. Good morning, Aaron.

10 Q. Can you tell the jury, are you currently
11 employed?

12 A. Yes, I am.

13 Q. Okay. Who are you employed by?

14 A. I'm employed by the U.S. Environmental
15 Protection Agency Region 2 office.

16 Q. Okay. Where is the Region 2 office?

17 A. It's in New York City.

18 Q. All right. So you work out of New York City?

19 A. Yes, sir.

20 Q. What is your position with EPA Region 2?

21 A. I'm an environmental engineer in the air
22 compliance branch.

23 Q. The air compliance branch. Can you tell the
24 jury what the air compliance branch is?

25 A. Yes. The air compliance branch, we enforce the

1 Clean Air Act requirements, and we only do air
2 inspections, not any other media.

3 Q. All right. How long have you been employed
4 with EPA in the air compliance branch?

5 A. Over 25 years.

6 Q. And if you can tell the jury what your job
7 duties are in that position you hold.

8 A. Yes. As environmental engineer in the air
9 branch, one of my job functions is to do compliance
10 inspections for the Clean Air Act. We go and
11 inspect for stationary sources for compliance with
12 the federal and state regulations.

13 One of the other things I do is also do
14 oversight of state programs where we periodically
15 go and review state programs, assure that they are
16 implementing them properly.

17 Q. Okay. How many states does Region 2 oversee?

18 A. Region 2 oversees New York, New Jersey, Puerto
19 Rico, and the Virgin Islands.

20 Q. All right. Can you explain what your
21 educational background is for the jury, please?

22 A. Yes. I have a bachelor's and master's in
23 chemical engineering from City College of New York.

24 Q. As part of your job duties have you received
25 any type of specialized training by the EPA?

1 A. Yes, I do.

2 Q. Okay. Can you describe some of that for the
3 jury, please?

4 A. Sure. Over the years I've taken some
5 specialized training classes on the job. I've
6 taken classes in how to do inspections at
7 stationary sources. I've taken classes on how to
8 evaluate hazardous waste incinerators. I've taken
9 classes on how to do inspections for fugitive
10 emissions from sources. I've taken classes in how
11 to review and write new source review permits.
12 Just a number of other sources -- courses that I've
13 taken over the years.

14 Q. All right. How many -- can you tell the jury
15 how many Clean Air Act compliance inspections
16 you've done?

17 A. Yes, I've done over 200 inspections.

18 Q. Have you ever inspected a coke facility before?

19 A. No.

20 Q. All right. At some point you did come to be
21 involved in an inspection at the Tonawanda Coke
22 facility?

23 A. Yes.

24 Q. Explain how -- if you can, explain for the jury
25 how you became involved with the Tonawanda Coke

1 Corporation.

2 A. Yes. Back in 2008 we, you know, we meaning the
3 EPA Region 2 office, received information from
4 headquarters. You know, they had evaluated air
5 emissions, TRI information. This is -- TRI is
6 toxic release inventory information. They had
7 evaluated this information from facilities all over
8 the country. And they did some risk analysis and
9 came up with a list of sources that they felt that,
10 you know, the region should go out and inspect.

11 The Region 2 office got a list of sources.
12 There were about a dozen sources on that list, of
13 which Tonawanda Coke was one of the sources on
14 there.

15 Q. Okay. Again, who puts out this TRI, the
16 toxic -- what is it called?

17 A. Yes, it's the toxic release inventory program.
18 It's a program under the EPA where facilities are
19 required to report on an annual basis their
20 emissions to the air, to the water, to the ground.
21 This is reported by the facility to the EPA, and
22 that information is then publicly available.

23 Q. Okay. So these facilities report this to the
24 EPA?

25 A. Yes, sir.

1 Q. Who compiles this, Region 2, or is there a
2 headquarters that compiles this?

3 A. I don't understand.

4 Q. Who puts out this TRI list?

5 A. The information is sent to EPA so the
6 headquarters would compile it.

7 Q. Okay. Where is headquarters for EPA?

8 A. Oh, the headquarters for EPA is in Washington,
9 D.C.

10 Q. All right. So this TRI list comes out.
11 Tonawanda Coke is on it?

12 A. Yes.

13 Q. All the other regions get their own TRI list?

14 A. When we say TRI list, I mean, you know, was
15 using TRI information to generate, you know, the
16 list of sources that were on that list.

17 Q. Oh, okay.

18 A. So there could have been other factors that
19 were used, but TRI was the major factor that was
20 used to generate that information.

21 Q. Okay. So Region 2 -- if I've got this
22 correctly, Region 2 gets a list from Washington
23 with about a dozen or so sources on it asking you
24 to inspect?

25 A. Yes, asking the regions to look into it and

1 possibly go and inspect.

2 Q. Okay. Why was -- was an inspection then
3 decided for the Tonawanda Coke Corporation?

4 A. Yes. After we got the list, we went and looked
5 at some other information that we had including,
6 you know, inspection history for this facility, and
7 we found out that the EPA had not inspected this
8 facility in over ten years. So that became another
9 factor in deciding whether we should go and inspect
10 Tonawanda Coke.

11 MR. PERSONIUS: Your Honor, the witness
12 referred to "we" looked at inspection reports.
13 Could we find out who the "we" is please?

14 THE COURT: Okay.

15 MR. MANGO: I'll ask.

16 THE COURT: Please.

17 BY MR. MANGO:

18 Q. Mr. Patel, are there other environmental
19 engineers that you work with in the air compliance
20 branch?

21 A. Yes, I do.

22 Q. So when you use the term "we" are you referring
23 to those people?

24 A. Yes, I am.

25 Q. Okay. Can you just tell the jury who those

1 other people are?

2 A. Yes. There is about 18 other environmental
3 engineers in the branch. Some of them I may have
4 consulted. Then we have my manager who is also
5 consulted on these before we -- before any decision
6 is made to inspect a facility.

7 Q. Okay. So when was the decision made that an
8 inspection was going to happen at the Tonawanda
9 Coke Corporation?

10 A. It was probably made --

11 MR. LINSIN: Objection, probably, your
12 Honor.

13 THE COURT: All right. Start again,
14 please.

15 BY MR. MANGO:

16 Q. Do you know when EPA Region 2 made a decision
17 to move forward with an inspection of the Tonawanda
18 Coke Corporation?

19 A. Yes, I do.

20 Q. Okay. Tell the jury when that was.

21 A. It was in October of 2008.

22 Q. Okay. Now, prior to that had you made any type
23 of request to any other divisions of EPA to assist
24 you in that inspection?

25 A. Yes, we did.

1 Q. Okay. Can you tell the jury what other
2 divisions of EPA you requested assistance from?

3 A. Yes, I can. Every year we get a request from
4 the NEIC, the National Enforcement Investigation
5 Center, out of Denver. They send a request out to
6 the regions asking if the region needs any
7 assistance with any inspections that they may help
8 us with. So we received a request from NEIC
9 earlier in 2008 or in June of 2008. And so that
10 request was out there, and when we decided to go
11 and inspect Tonawanda Coke, we solicited NEIC's
12 assistance on that inspection.

13 Q. Okay. What kind of inspection were you
14 planning then for the Tonawanda Coke Corporation?

15 A. We were planning to do a full compliance
16 evaluation.

17 Q. Was this a criminal or civil inspection?

18 A. This was a civil inspection.

19 Q. Does the air compliance branch have any
20 criminal enforcement powers?

21 A. No, it does not.

22 Q. Okay. Describe what you mean for the jury what
23 a full compliance inspection is.

24 A. Yes. A full compliance inspection for the air
25 program is to evaluate compliance with all the

1 applicable air requirements to that facility. It
2 could be the federal requirements as well as the
3 state requirements, so that is that full compliance
4 evaluation.

5 Q. Okay. What are some of the federal regulations
6 that were involved in the Tonawanda Coke
7 Corporation inspection?

8 A. There were a number of federal regulations that
9 applied to coke ovens. We have NESHAP regulations.
10 These are the National Emission Standards for
11 Hazardous Air Pollutants, and these are mainly
12 focused on benzene emissions from coke ovens,
13 various process units at this coke oven. We also
14 have what we call MACT regulations. These are
15 Maximum Achievable Control Technology regulations.
16 And these apply to other portions at the coke oven,
17 at the process units at the coke oven, and they
18 regulate hazardous air pollutants.

19 So we have one that mainly focuses on benzene
20 and one that focuses on hazardous air pollutants.
21 These are the federal regulations we were planning
22 to inspect for at the Tonawanda Coke facility.

23 THE COURT: Excuse me. The second one
24 focuses on what?

25 THE WITNESS: Hazardous air pollutants,

1 sir.

2 THE COURT: That's the MACT?

3 THE WITNESS: Yes, sir.

4 THE COURT: Thank you.

5 BY MR. MANGO:

6 Q. Are there state requirements or regulations
7 that are considered when doing a full compliance --
8 full compliance inspection?

9 A. Yes, there are.

10 Q. Can you tell the jury what those are -- I mean
11 what those were in this case?

12 A. Yes. You know, each state also has what we
13 call a State Implementation Plan, a SIP, and these
14 regulations have been promulgated by the state
15 which the EPA have reviewed. And so when we do a
16 full compliance evaluation, we also go and enforce
17 these regulations because they're federally
18 enforceable.

19 Q. Okay. Did you participate in an inspection at
20 the Tonawanda Coke Corporation?

21 A. Yes, I did.

22 Q. Okay. When was that inspection?

23 A. Inspection was in April 2009.

24 Q. Do you know how many days that inspection was?

25 A. Yes. It was for six days.

1 Q. Were you there all six days?

2 A. No, sir.

3 Q. Okay. Tell the jury why you were not there for
4 all six days.

5 A. I was at the inspection for the first week for
6 four days, from Tuesday through Friday. At the end
7 of the week I had to go back to New York office.

8 Q. Okay.

9 A. I did not have permission from my management to
10 stay over for the remaining of the inspection.

11 Q. Okay. Did NEIC have permission to stay?

12 A. Yes, sir.

13 Q. What was that permission? Why did you not have
14 permission?

15 A. Basically as a matter of cost, you know, there
16 was -- we had three inspectors from the New York
17 City office that were at the inspection, so, it was
18 just getting too much to keep all three of us here
19 for another week.

20 Q. You didn't have the budget to stay?

21 A. That's correct.

22 Q. NEIC had the budget to stay?

23 A. Yes. They operate on a separate budget.

24 Q. So what different agencies or subagencies of
25 EPA or other agencies were involved in the

1 inspection?

2 A. At the inspection other than the EPA, we also
3 had inspectors from the New York State DEC.

4 Q. Okay. So it was EPA --

5 A. Yes. It was EPA, NEIC. We had inspectors from
6 EPA New York office, and then we had inspectors
7 from the DEC office here in Buffalo.

8 Q. All right. Was there one person from EPA in
9 Washington that came up as well that you're aware
10 of?

11 A. Yes, there was a person, but he did not come on
12 site. He was in the area.

13 Q. He took measurements off site?

14 A. That's correct, sir.

15 Q. All right. Why did DEC participate in the
16 inspection?

17 A. It's our practice to make sure that we involve
18 the state programs on our inspections. Even though
19 this was an EPA-lead inspection, we normally invite
20 the states to accompany us during the inspection,
21 and then it's up to them to come with us or not.

22 Q. Do you know who participated in the inspection
23 from DEC?

24 A. Yes, I do.

25 Q. Okay. Who?

1 A. There were two inspectors. One was Cheryl
2 Webster and the other person was Larry Sitzman.

3 Q. All right. Following the inspection, what if
4 anything did you do to follow up on the April
5 inspection?

6 A. After the inspection I had several discussions
7 with the other inspectors from NEIC because they
8 were here for another couple of days after I left.
9 So we had discussions on what they found during the
10 inspection. And we had discussions with my
11 management of what our preliminary findings were
12 during the inspection. And after we analyzed that,
13 we decided to send an information request letter to
14 Tonawanda Coke.

15 Q. Okay. Can you tell the jury what an
16 information request letter is?

17 A. Yes. Under the Clean Air Act we have the
18 authority to send these request letters to seek
19 more information to determine a proper compliance
20 evaluation. You know, under the information
21 request letters we can require the sources to
22 conduct stack tests. We can require the sources to
23 submit data or records that they were required to
24 keep which we were not able to obtain during the
25 inspection. So basically it's to obtain more

1 information from the facility.

2 Q. Okay. So why would EPA send out an information
3 request?

4 A. Like I said, after we discussed the preliminary
5 findings after the inspection we felt that we did
6 not have all the information to make a complete
7 compliance determination at that point, so we
8 needed additional information.

9 Q. Okay. Does EPA rely on responses to those
10 requests for information that are sent?

11 A. Yes. We depend on these very much because the
12 information that is submitted is supposed to be
13 certified by the company and has to be complete,
14 and that information is very critical to make the
15 final determination on compliance.

16 Q. Okay. So do you know if an information request
17 or information requests were sent to the Tonawanda
18 Coke Corporation?

19 A. Yes, I do.

20 Q. Were you involved in sending those information
21 requests out?

22 A. Yes, I helped drafting those request letters.

23 Q. Okay. How many requests for information -- if
24 we may call that RFI, is that a term you use,
25 request for information?

1 A. You could use that. We just usually call it
2 the 114 letter.

3 Q. Okay. Why -- what's 114 relate to?

4 A. That's the portion of the Clean Air Act that
5 authorizes the EPA to issue these letters.

6 Q. Okay. So we'll call it that. How many 114
7 letters were sent to the Tonawanda Coke Corporation
8 in 2009?

9 A. We sent two 114 letters.

10 Q. When did you send the first 114 letter?

11 A. The first one was sent in early July, a couple
12 of months after the inspection.

13 Q. Okay. When did you send the second 114 letter?

14 A. The second one was sent in early September
15 2009.

16 Q. Okay. Why was the second 114 letter sent?

17 A. The first one that we sent we were trying to
18 obtain some general process information from the
19 facility, you know, like operating data from
20 various processes at the facility. And we also
21 wanted the company to submit some testing
22 protocols, because like I explained earlier, under
23 114 we have the authority to have a facility
24 conduct performance test or stack tests, so that
25 was the purpose of this 114 was to solicit a

1 protocol for them to do some testing.

2 The second 114 letter that we sent, we sent
3 that because we -- during the inspection we felt
4 that we did not get all the records and
5 documentation that would help us make a complete
6 evaluation. So the second 114 was geared towards
7 the specific requirements of the regulations and to
8 try to obtain that information.

9 Q. Okay. So this second 114, were you involved in
10 sending that one out?

11 A. Yes, I was involved.

12 Q. Do you know who signed this 114 that you said
13 was sent in early September?

14 A. The 114s are signed by my division director,
15 Dore LaPosta.

16 Q. All right. What is her role, if any, in
17 sending the 114 letter out?

18 A. She is part of management. She has the
19 authority, as it's delegated down, to sign these
20 letters, so she is the person that signs off on
21 these.

22 Q. Okay. Is it fair to say that you and the
23 people in your branch drafted this?

24 A. Yes. It's drafted at the branch.

25 Q. Okay. Have you reviewed this September 114

1 letter prior to you coming here to testify today?

2 A. Yes, I have.

3 Q. All right.

4 MR. MANGO: Your Honor, I'd like to pull
5 up for identification purposes Government
6 Exhibit 126, and absent an objection, I would move
7 this document into evidence. It is multiple pages,
8 your Honor. 126.

9 MR. LINSIN: Your Honor, may we see the
10 signature page of this document, please?

11 No objection, your Honor.

12 MR. PERSONIUS: Your Honor, if we could,
13 please, could we see the last page?

14 MR. MANGO: Yes.

15 THE COURT: Coming up.

16 MR. PERSONIUS: Thank you, Judge. No
17 objection.

18 THE COURT: Okay. 126 received, no
19 objection. Do you want it published?

20 MR. MANGO: Yes, please, your Honor.

21 THE COURT: Okay. It can be published,
22 please.

23 MR. MANGO: Thank you.

24 (Government's Exhibit 126 was received
25 into evidence.)

1 BY MR. MANGO:

2 Q. Mr. Patel, do you see what's on your screen
3 now?

4 A. Yes.

5 Q. Okay. Let's just focus in on this area,
6 please. What is this document that is on your
7 screen, Exhibit 126?

8 A. This is the 114 letter that we sent in
9 September of 2009.

10 Q. And do you recognize this document?

11 A. Yes.

12 Q. Do you know if you received a response to this?
13 It's dated September 1st of 2009, this
14 September 1st, 2009, 114?

15 A. Yes, we did.

16 Q. Okay. We'll talk about that response in a
17 moment. From what's on your screen, who was this
18 114 sent to?

19 A. The 114 is addressed to Mark L. Kamholz, the
20 environmental manager at Tonawanda Coke.

21 Q. All right. If we could go to the second page,
22 please. If you could focus on this first
23 paragraph.

24 If you could start reading right there at the
25 beginning of that sentence, "in accordance".

1 A. Yes. "In accordance with Section 113(c)(2)(A)
2 of the Act, criminal penalties may be imposed on
3 any person who knowingly makes any false material
4 statement, representation, or certification in his
5 or her response, or knowingly alters, conceals, or
6 omits any material information."

7 Q. Okay. If we could go to -- so, again, you've
8 testified EPA relies on responses to these
9 documents?

10 A. That's correct.

11 Q. All right. If we could go to the third page,
12 please, Lauren.

13 There's some CCs at the bottom. Was this sent
14 to anybody in the New York State Department of
15 Environmental Conservation as well?

16 A. Yes, we did.

17 Q. Why would you also include a CC to the DEC?

18 A. That's our normal practice is just to let the
19 state partners know that, you know, we have this
20 information request out. And, you know, it's just
21 normal standard operating procedure to CC the
22 state.

23 Q. Okay. If we can go to page 4, please. There's
24 a person here listed as Carey Secrest. Is he that
25 person you mentioned from Washington who --

1 A. Yes, that's the person.

2 Q. Okay. If we can go to the fifth page, please.

3 Now pages 5, 6 and 7, if we just want to scroll
4 through those. Can you tell what those relate to?

5 A. Yes, that's just boilerplate information that
6 we attach to the 114 which allows the company to
7 submit anything, if it's confidential business
8 information, that they feel that should not be
9 released to the public, then they can assert that
10 on their response.

11 Q. Okay. Page 8, if we can go there. What is
12 this page?

13 A. This is the -- this is just general information
14 on how to respond to the 114.

15 Q. Like instructions?

16 A. Instructions, that's correct.

17 Q. Okay. If we can go to page 9 now. All right.
18 Now what is this information here? And what is --
19 what is the jury looking at?

20 A. Okay. This is the first page of all the
21 questions that we asked in that 114.

22 Q. Okay. So this is the meat of the 114?

23 A. That's correct, yes, sir.

24 Q. Okay. Let's look at number three. If we can
25 just focus on number three here. A and B, if you

1 can read those for the jury.

2 A. A and B?

3 Q. Yes.

4 A. Okay. This question has to do with the bypass
5 bleeder flare at the facility. A reads, "Provide a
6 detailed description of how the bypass bleeder
7 flare operates and how compliance with all Title V
8 permit conditions applicable to such flare is
9 demonstrated."

10 And B reads, "Describe in detail the frequency
11 that coke oven gas is vented to the bypass stack."

12 Q. Okay. Have you had heard the term "battery
13 flare stack"?

14 A. Yes, I have.

15 Q. Are those one in the same?

16 A. Yes, sir.

17 Q. The bypass bleeder flare at the facility is the
18 same as what you know as a battery flare stack?

19 A. That's correct.

20 Q. Okay. Why would you request information about
21 the battery flare stack?

22 A. There is -- earlier I mentioned the MACT
23 regulation that applies to coke oven, and one of
24 the regulations that applies has specific
25 requirements for the bypass bleeder flare.

1 Q. Okay.

2 A. And that's why we had the question here.

3 Q. Okay. If we can come out of this, Lauren, and
4 please go to the next page. All right. If we can
5 focus in on number eight, please.

6 This is request number eight. If you can read
7 the whole thing for the jury, please?

8 A. Yes. This question deals with the quench
9 towers. It's for the quench towers at the
10 facility. A, "State whether the quench towers have
11 any baffles. If your answer is no, explain why
12 not."

13 And B, "Explain in detail TCC's maintenance
14 program for the quench towers. Provide copies of
15 records of all maintenance and repair activities
16 conducted at the quench towers during the past five
17 years."

18 Q. All right. For this request, number eight, why
19 would you ask for information about the quench
20 towers and whether they have baffles?

21 A. As I said earlier, you know, we were doing a
22 full compliance evaluation, so one of the portions
23 of the full compliance evaluation is to determine
24 compliance with the Title V permit. And in the
25 Title V permit there is a condition regarding the

1 quench towers, and that the quench towers need to
2 have baffles.

3 Q. Okay. If we can come out of that, Lauren, and
4 please go to the next page. And then the next
5 page. If we could focus in on 20, request number
6 20. If you can read that whole item there for the
7 jury, please.

8 A. A through F?

9 Q. Yes, please. Starting at "for". Right there.

10 A. Okay. This question had to do with the
11 pressure relief valve or the PRV. So for the
12 pressure relief valve on the coke oven gas return
13 line at the facility, A, "Provide a detailed
14 description of the function of the PRV and how this
15 PRV operates.

16 "B, Provide the date of installation for the
17 PRV bleeder valve.

18 "C, Provide a detailed description of TCC's
19 operating procedures for the PRV, including all
20 documentation of such procedures.

21 "D, Describe each operating parameter that is
22 monitored for the PRV and provide copies of all
23 monitoring records for the PRV for the past five
24 years.

25 "E, Provide an estimate of the quantity of coke

1 oven gas emitted from the PRV on a daily and
2 monthly basis in pounds per hour and an estimate of
3 the hours per day that emissions from the PRV
4 occur.

5 "And F, State whether any coke oven gas
6 emissions from the PRV are reported to EPA or New
7 York State DEC as deviations from TCC's Title V
8 permit requirements. If your answer is yes,
9 provide scope of all such --"

10 Q. If we could go to the next page, please,
11 Lauren. Do you want to keep reading there.

12 A. "Provide copies of all such reports for the
13 past five years. If your answer is no, explain why
14 such information are not reported.

15 Q. Why did you request information about the PRV,
16 the pressure relief valve?

17 A. At the April 2009 inspection during the second
18 week when I was not there the inspectors from the
19 NEIC, the Denver office, they were given
20 information on the PRV, and they were given some
21 explanation on how the gases get released from the
22 PRV. So the purpose of asking that question here
23 was to try to obtain more information on how the
24 PRV operates, and also to obtain records of any
25 monitoring data that they kept for the PRV.

1 Q. Okay. All right. Thank you. If we can come
2 out of that. Lauren, if we could go to page 15 of
3 this document. Let's focus in on request number 32
4 and 33.

5 Do you see those requests?

6 A. Yes.

7 Q. Okay. Can you read 32, please?

8 A. Yes. Thirty-two, "For the pilot light
9 installed on the bypass bleeder flare at the
10 facility, A, provide the date when the pilot light
11 was installed on the bypass bleeder flare.

12 "B, Explain in detail how the pilot light on
13 the bypass bleeder flare is monitored continuously
14 consistent with 40 CFR Sections 63.307(b)(4) and
15 63309(h)(2).

16 "C, Provide all documentation indicating when
17 the thermocouple or equivalent device is in service
18 and when it is not in service for the past five
19 years.

20 "And D, Provide all documentation for
21 maintenance and repair of the pilot light for the
22 past five years."

23 Q. Okay. Please read 33 as well.

24 A. Yes. Thirty-three, "Provide detailed
25 information and documentation regarding all periods

1 during the past five years in which the facility's
2 bypass bleeder flare was not operating with a pilot
3 flame present. The information must include the
4 dates and the duration of each such period. For
5 each period, explain in detail the reasons why the
6 flare was not operating with a pilot flame
7 present."

8 Q. Thank you, Mr. Patel. Why did you request
9 information about the pilot light on the battery
10 flare stack?

11 A. One of the MACT regulations that applies to
12 coke ovens is specific requirement for the bypass
13 bleeder flare and the pilot light that goes with
14 it.

15 Q. Now -- thank you, Lauren. We can take that
16 down.

17 We talked about -- you mentioned before you did
18 receive a response from this 114 letter?

19 A. Yes, we did.

20 Q. Okay. Do you -- did you review that response
21 prior to coming here to testify today?

22 A. Yes, I did.

23 MR. MANGO: Okay. And, your Honor, at
24 this point, I'd like to pull up Government
25 Exhibit 127, and absent an objection, offer this

1 into evidence.

2 MR. LINSIN: No particular objection to
3 the document, but could we establish when this
4 witness actually reviewed -- when this witness
5 first reviewed this document? It's not clear to me
6 from his testimony.

7 THE COURT: Okay. Let's take care of the
8 document first, and then you'll set that up --

9 MR. MANGO: I will, your Honor.

10 THE COURT: -- foundationally.

11 MR. LINSIN: No objection to the document,
12 your Honor.

13 MR. PERSONIUS: Your Honor, could we
14 please see the last page? It's page 8.

15 MR. MANGO: Page 10 at the bottom. Page 8
16 at the top and then down there there is page 10.

17 THE WITNESS: The Bates 10.

18 MR. PERSONIUS: Your Honor, with the
19 understanding that this letter was accompanied by
20 any number of attachments that are not part of the
21 exhibit, we have no objection. But as it is, it's
22 not the complete response. It doesn't have any of
23 the attachments.

24 THE COURT: Okay.

25 MR. MANGO: Yes, your Honor.

1 THE COURT: Letter with partial
2 attachments will be received as 127. No objection.

3 (Government's Exhibit 127 was received
4 into evidence.)

5 THE COURT: And may be published.

6 MR. MANGO: Thank you, your Honor. I
7 would ask that it be published.

8 BY MR. MANGO:

9 Q. Mr. Patel, can you tell the jury when you first
10 reviewed this response?

11 A. The response was received in October 2009, and
12 I reviewed it sometime thereafter. Because it was
13 a huge response, it was like two boxes of
14 information, the review just took several weeks to
15 go through.

16 Q. You heard about attachments. There was, is it
17 true, a number of attachments to this letter? Is
18 that right?

19 A. Yes, there was.

20 Q. And it filled up how many boxes?

21 A. Almost two boxes of information.

22 Q. All right. So let's look at this front page.
23 Who was the response sent from?

24 A. The response was signed by Mark L. Kamholz, the
25 environmental manager at Tonawanda Coke.

1 Q. Okay. You said you received this in October?

2 A. Yes, sir.

3 Q. Even though it's dated September 7th. Is that
4 accurate?

5 A. Yes, I believe that's a typo.

6 Q. Okay. Okay. If we can go to the next page
7 please, Lauren.

8 Okay. What is this?

9 THE COURT: Excuse me. Back that up,
10 please, Lauren.

11 What's the typo, Mr. Patel?

12 THE WITNESS: The September should be
13 October 7, 2009.

14 THE COURT: But it was received October
15 5th, right?

16 THE WITNESS: That's when we received it,
17 yes.

18 THE COURT: And you say it should be dated
19 October 7th before you received it?

20 THE WITNESS: Well, that's the date that
21 was put by the company, your Honor.

22 THE COURT: It's September 7th, right?

23 THE WITNESS: That's correct.

24 THE COURT: You say that should be
25 October 7th?

1 THE WITNESS: Well, it should be sometime
2 in October. It could be October 5th or 7th.

3 MR. MANGO: Okay.

4 BY MR. MANGO:

5 Q. Now, I'll ask some questions, your Honor. This
6 document came out of the EPA files, is that right?

7 A. That's correct.

8 Q. Okay. And somebody at EPA -- do you see this
9 handwriting here that says received 10/5/09?

10 A. Yes, I do.

11 Q. Is that your handwriting?

12 A. No.

13 Q. Okay. Is it somebody in EPA's handwriting?

14 A. Yes.

15 Q. Okay. Because this document came out of the
16 EPA file?

17 A. That's correct.

18 Q. Okay. So that date -- that date just -- do you
19 believe the September 7, 2009, date is accurate or
20 not accurate?

21 A. It's not accurate.

22 Q. Okay. Do you know when the Tonawanda Coke
23 Corporation actually sent, put in the mail the
24 response?

25 A. I don't know when it was actually put in the --

1 in the mail, but there's a certification on the
2 next page.

3 Q. Okay. Let's go to that certification, if we
4 could.

5 Okay. This certification is dated what date?

6 A. It's dated October 6th, 2009.

7 Q. All right. And I'd like to focus in on this
8 portion now. Can you read the certification for
9 the jury, please?

10 A. Yes. The entire certification?

11 Q. Yes, please.

12 A. Yes. "I certify, under penalty of law, that I
13 have personally examined and am familiar with the
14 information submitted in response to the
15 information request and all documents submitted in
16 this response, and that based on my inquiry of
17 these individuals immediately responsible for
18 obtaining the information, I believe that the -- I
19 believe that the submitted information is true,
20 accurate, and complete, and that all documents
21 submitted within this response are complete and
22 authentic, unless otherwise indicated.

23 "I am aware that there are significant
24 penalties for submitting false information,
25 including the possibility of fine and imprisonment.

1 "I am also aware that for one year from the
2 date of the information request I am under an
3 obligation to supplement my response to the
4 information request if any additional information
5 relevant to the matters should become known or
6 available to me."

7 Q. Okay.

8 MR. LINSIN: Your Honor, may I just
9 interject a request at this point? I remain
10 confused, given the testimony concerning the dates
11 on these two pages. And the question I would ask,
12 if we could, the witness to address is, what his
13 knowledge is about who actually initialed or
14 hand-wrote the date that appears on the first page
15 of the letter. I believe he said it was some EPA
16 official. If he has any better insight into that,
17 it may be helpful for everyone.

18 THE COURT: I think that was contained in
19 Mr. Mango's question.

20 You want to follow up on that, please, so we
21 get some clarification?

22 MR. MANGO: Yes, your Honor.

23 BY MR. MANGO:

24 Q. I believe I asked this. The handwriting that
25 we saw on the first page --

1 A. Yes.

2 Q. -- do you know whose handwriting that is?

3 A. I don't know whose handwriting it is. If I had
4 to guess, it's probably one of the three inspectors
5 that were at the inspection from the EPA Region 2
6 office.

7 THE COURT: Point out the handwriting that
8 we're talking about.

9 Highlight that, please, Ms. DiFillipo. In
10 yellow, please. Thank you.

11 BY MR. MANGO:

12 Q. That's the handwriting. You don't know whose
13 handwriting that is?

14 A. No, sir.

15 Q. Do you know whether that date is accurate or
16 not?

17 A. No, sir.

18 Q. Okay. But if we go to the next page on the
19 certification, it's signed on October 6th, is that
20 right?

21 A. That's correct, sir.

22 Q. Okay. All right. If we can go to page 3 now.
23 If we can focus in on 3A and B.

24 Can you read there what Mr. Kamholz told the
25 EPA about 3A and B?

1 A. Yes. This is the response to Question 3. 3A
2 reads: "The bypass bleeder flare is operated by
3 manually opening the valve that connects collector
4 main to the flare. The flare is equipped with a
5 natural gas pilot light that provides automatic
6 ignition of any flared raw coke oven gas. The
7 pilot light has a terminal couple -- thermocouple
8 that sets off -- that sets off a strobe light
9 should temperatures fall below 600F, at the
10 thermocouple. The New York State DEC inspects our
11 facility for Title V flare compliance.

12 And 3B reads: The frequency of venting to the
13 bypass stack is historically very infrequent. Our
14 records do not indicate any incidents except for
15 several in 2009, March 17, June 23, and
16 August 21st.

17 Q. Thank you.

18 Lauren, if we could come out of that and go to
19 the next page, please. And then the next page.
20 I'm sorry, page 4 is what I mean.

21 Down here at the bottom there was a response
22 regarding the quench towers, the request that was
23 made.

24 A. Yes.

25 Q. Can you read number 8 for the jury, please?

1 A. Yes. "Number 8: Quench towers. A, quench
2 towers are not baffled. The quench towers at
3 Tonawanda Coke are not traditional quench towers.
4 They are short, about 40 feet high, and have very
5 large openings, about 14 feet by 51 feet. This
6 greatly reduces the upward velocity of the quench.
7 In addition, foundry coke offers at least 3.38
8 times less surface area for any particulate
9 degeneration.

10 "B, maintenance is done on an as-needed basis.
11 Records are not maintained."

12 Q. Okay. So you've read this. You also went
13 through the attachments that were included to this
14 response?

15 A. Yes.

16 Q. Okay. In this letter or in any of the
17 attachments, is there any mention that DEC had
18 granted a formal exemption for either of the quench
19 towers?

20 A. No.

21 Q. How about is there any mention regarding an
22 informal exemption for any of the quench towers?

23 A. There was no mention.

24 Q. Okay. If we could go to page 6, please,
25 Lauren.

1 If you could start at the bottom here and then
2 we will have to move to the next page. This is in
3 response to number 20. Can you read this, please,
4 for the jury?

5 A. Yes. "Number 20: Coke oven gas pressure
6 relief valve. Consulted P. Cahill.

7 "A, the purpose of the PRV is -- is relieve
8 excessive pressure in the gas system. Should that
9 pressure exceed a pre-set level, the valve opens
10 automatically.

11 "B, about ten years ago --

12 Q. Now, before you read, what may make sense if --
13 for number 20 if we continue for C, if you remember
14 in your 114 letter, is this -- for C, was it
15 provide a detailed description of TCC's operating
16 procedures for the PRV including all documentation
17 of such procedures?

18 A. That's -- C is a response to that question.

19 Q. Yes. Okay.

20 A. Yes.

21 Q. Okay. So now can you read C, the response?

22 A. Yes. "C, there are no written operating
23 instructions for the PRV. The objective is to
24 maintain consistent operating gas pressure and not
25 exceeding the set point, thus, conserving coke oven

1 gas for boiler and coke battery use."

2 Q. Okay. Let's go to D, which -- go ahead.

3 A. "D, the only operating parameter that is
4 monitored for the PRV is the coke oven gas
5 pressure. Charts are maintained for 30 days plus
6 to date. Charts that exist are in Attachment 20D."

7
8 Q. E?

9 A. "E, the PRV opens very rarely. Again, the
10 objective is to conserve coke oven gas for boiler
11 and battery use. Should the valve open, it would
12 only be for five to ten seconds. In the open
13 position, the PRV could emit coke oven gas at the
14 rate of 7,135 pounds per hour." In parenthesis it
15 says consulted C. Luricilla. "And the PRV has not
16 opened in months."

17 Q. Okay. F?

18 A. "F, coke oven gas emissions have not been
19 estimated, nor have the been [sic] reported as
20 deviations from the TCC's Title V permit. The
21 emissions have not been reported because they are
22 believed to be de minimus."

23 Q. All right. And why don't you read the note to
24 Response 20, please?

25 A. The note, "The current PRV is to be replaced

1 with a new PRV located at the end of the coke oven
2 gas system. The new PRV is equipped with a
3 shielded automatic flare of similar design to the
4 one on the collector main. However, the new PRV is
5 equipped with an electronic igniter."

6 Q. I'd like to go to page 9 now, please, Lauren.

7 Do you see the part at the bottom there, 32,
8 relating to the pilot light?

9 A. Yes, I do.

10 Q. Okay. If you could read that and then we'll --
11 actually, before we go on, there was a mention to
12 some attachments in 20, in the response to 20 --

13 A. Yes.

14 Q. -- regarding some circular charts.

15 A. Yes.

16 Q. Is that what that attachment related to? You
17 were provided with some circular charts?

18 A. Yes, we were provided about 30 days of circular
19 charts.

20 Q. Okay. All right. Now, if you could read 32,
21 please.

22 A. "32. Pilot light. A, the bypass bleeder flare
23 was installed by March 31st, 1994. See attachment
24 32A. The pilot light was part of that
25 installation. While I could not find any

1 definitive document as to date of installation,
2 however, a copy of the pilot light construction
3 approval is also in attachment 32A."

4 Q. Okay. If we could go to the next page, please.

5 If you can continue reading B then.

6 A. "B, the pilot light has a thermocouple in the
7 flame that sends a signal to a switch that operates
8 a strobe on top of the selector main. Should the
9 thermocouple signal drop below 600-degree F, output
10 to the switch closes to activated the strobe light,
11 indicating the pilot light is out.

12 "C, documentation indicating when the
13 thermocouple was in or out of service during the
14 last five years does not exist. However, we do
15 know that on August 21st, 2008, the pilot light was
16 found to be not operating. It was relit, but the
17 thermocouple was faulty. A new thermocouple was
18 installed on September 9, 2008. Subsequently the
19 natural gas regulator was not operating to
20 adjustment and was replaced on November 17, 2008.
21 This did not cause any pilot light outage. On
22 June 19, 2009, the charge car hit an electrical
23 conduit that supplied power, the pilot light
24 indicator system, and caused some relays to burn.
25 New relays were ordered and installed by

1 February 12, 2009, returning the strobe light
2 indicator to service. The pilot light was checked
3 visually during this time and was in continuous
4 service.

5 "D, see 32C.

6 Q. And just 33, if we could finish with that,
7 please.

8 A. Yes. "Documentation as to when the pilot light
9 on the bypass bleeder flare was not operating does
10 not exist.

11 Q. Okay. Thank you.

12 Lauren, we can take that down.

13 So you've reviewed as part of your duties the
14 response sent by the Tonawanda Coke Corporation?

15 A. I did.

16 Q. Do you know what -- do you know what is the
17 difference between a quench tower and a quench
18 station?

19 A. Yes, I do.

20 Q. Okay. Can you explain that for the jury,
21 please?

22 A. In one of the MACT regulations there is a
23 distinction made between quench towers and a quench
24 station. Basically the distinction being that a
25 quench station cannot be operated for more than

1 5 percent of the total number of quenches.

2 Q. Okay.

3 A. The quench station does not have to have
4 baffles. So it has to be operated for less than
5 5 percent of the time and it cannot have baffles.

6 Q. Okay. Does that distinction turn on how high
7 or low the tower is?

8 A. No. There is no mention of how high or low the
9 tower can be in the regulations. The only
10 distinction is operating time.

11 Q. Did you review the response made regarding the
12 pressure release valve that you went through,
13 Response 20?

14 A. Yes, I did.

15 Q. And did you have a chance to review the
16 circular charts that were included as attachments?

17 A. Yes, I did look through them.

18 Q. And based on that information submitted by the
19 Tonawanda Coke Corporation, did you make a
20 determination regarding the amount of coke oven gas
21 that was emitted from the PRV?

22 A. Yes, I did.

23 Q. Okay. Explain for the jury what your
24 determination was.

25 A. Yes. In the response to our 114 letter, the

1 company stated that the valve opens for five to ten
2 seconds. And the company also stated that the
3 pressure relief valve could emit about 7,000 pounds
4 per hour if it was open. During the inspection
5 that we did in April 2009, the inspectors from NEIC
6 from the Denver office, they were told that the
7 pressure relief valve opens every half hour, at
8 least once every half hour.

9 And using that information, so assuming that it
10 opens for ten seconds every half hour, if I do the
11 math, and assuming that the pressure relief valve
12 releases 7,000 pounds per hour of gas, I came up
13 with an estimate of about 173 tons per year of coke
14 oven gas that could potentially be released from
15 that pressure relief valve.

16 Q. Okay. 173 tons per year?

17 A. That's correct. Each ton is 2,000 pounds.

18 Q. Okay. Would you consider 173 tons of coke oven
19 gas emissions to be de minimus, as the words were
20 used in the response?

21 A. I would not consider that to be de minimus.

22 Q. Based on your review of the information
23 request, the response, that information you just
24 presented to the jury, what did you do in response
25 to -- after receiving this response letter?

1 A. Well, after I -- after the EPA received this
2 response, I reviewed it. We discussed the
3 information with my management. And it was then
4 decided that we should issue a notice of violation
5 for any noncompliance issues.

6 Q. Okay. Just explain just in general terms what
7 a notice of violation is for the jury, please.

8 A. Sure. A notice of violation is an enforcement
9 document that the EPA issues. It's basically
10 putting the source and the state on notice that
11 there is violation that we have documented.

12 Q. Okay. And EPA apparently has authority to
13 issue NOV's?

14 A. Yes, the EPA has the authority.

15 Q. Okay. NOV, I'm using, notice of violation?

16 A. That's correct.

17 Q. Okay. What determinations go into being made
18 as to whether EPA is going to issue an NOV? How do
19 you make that determination?

20 A. Well, we have, you know, information that we
21 obtain during the inspection. We have information
22 that we obtain from our review of the 114 letter.
23 And based on that information and -- you know, we
24 have the regulations that are -- that are
25 applicable to the facility, and that's where the

1 determination is made, whether there is a violation
2 or not.

3 Q. All right. So in this case you determined that
4 an NOV would be issued to the Tonawanda Coke
5 Corporation?

6 A. Yes, for violations of the New York State SIP
7 and for violations of the Title V permit.

8 Q. Okay. So was an NOV issued to the Tonawanda
9 Coke Corporation relating to the quench towers?

10 A. Yes, because this was a requirement of the
11 permit, the Title V permit. It was a requirement
12 that the quench towers had to have baffles. The
13 information that was submitted by the company
14 stated that they did not have baffles. So we
15 determined that to be a violation, and, therefore,
16 we issued a notice of violation for that.

17 Q. When did that notice of violation get issued?

18 A. That notice of violation was issued in
19 December 2009.

20 Q. Okay. Did EPA decide that a notice of
21 violation should be issued for the pressure release
22 valve?

23 A. Yes.

24 Q. Okay. And when did -- was an NOV, notice of
25 violation, issued for the pressure release valve?

1 A. Yes, there was a second notice of violation for
2 the pressure relief valve.

3 Q. And when was that issued?

4 A. That was issued in April of 2010.

5 Q. April of '10?

6 A. That's correct.

7 Q. Okay. Does the fact that a notice of violation
8 is issued by the civil air compliance branch have
9 any effect on whether criminal enforcement could
10 occur?

11 MR. LINSIN: Objection, your Honor.

12 THE COURT: Grounds?

13 MR. LINSIN: Competency of this witness to
14 respond to that kind of legal question.

15 THE COURT: Yeah, without more, I'll
16 sustain the objection.

17 MR. MANGO: Okay.

18 BY MR. MANGO:

19 Q. The notice of violation, is that a civil or
20 criminal document?

21 A. It's a civil document, as I recall.

22 Q. Okay. Have you been involved in any cases in
23 your career where a civil notice of violation has
24 been issued and then -- let me rephrase that, your
25 Honor.

1 Are you aware in your training and experience,
2 are you aware of whether a civil notice of
3 violation has any bearing on whether criminal
4 enforcement can occur?

5 MR. LINSIN: Objection, relevance.

6 THE COURT: Sustained.

7 BY MR. MANGO:

8 Q. Was the civil air compliance branch involved in
9 any way in making a criminal referral in this case?

10 A. My branch in New York?

11 Q. Your branch.

12 A. No, sir.

13 MR. MANGO: Your Honor, can I have one
14 moment, please?

15 THE COURT: Yes.

16 BY MR. MANGO:

17 Q. Mr. Patel, do you know the procedure for the
18 enforcement of violations of a Title V permit by
19 the EPA?

20 A. Any violation of the title --

21 THE COURT: It calls for a yes or no.

22 THE WITNESS: Yes.

23 BY MR. MANGO:

24 Q. Okay. You're familiar with that?

25 A. Yes.

1 Q. Okay. How do -- how does enforcement of the
2 Title V permit in violations of the Title V permit
3 occur by the civil air compliance branch?

4 A. I don't understand your question.

5 MR. MANGO: Okay. Your Honor, may have
6 just one moment? Thank you, your Honor.

7 THE COURT: Sure.

8 BY MR. MANGO:

9 Q. Mr. Patel, what procedures do you follow for
10 the enforcement of violations of a facility's
11 Title V permit?

12 A. If we document violations of a Title V permit,
13 we issue a notice of violation for that -- for
14 those violations.

15 Q. Is that a civil or criminal document?

16 MR. LINSIN: Objection. Asked and
17 answered.

18 THE COURT: Yeah, but I'll allow it.

19 Go ahead. You may answer.

20 THE WITNESS: That is a civil procedure.

21 BY MR. MANGO:

22 Q. Do you know -- in your experience, your
23 understanding of the Clean Air Act, do you know
24 whether criminal enforcement has -- is -- I'm
25 sorry.

1 -- whether civil enforcement through the use of
2 notices of violation has any effect on criminal
3 enforcement --

4 MR. LINSIN: Objection --

5 MR. MANGO: -- ability?

6 MR. LINSIN: -- relevance.

7 THE COURT: Relevance and other grounds,
8 sustained.

9 MR. MANGO: Your Honor, if I could have
10 one moment. Thank you, your Honor.

11 BY MR. MANGO:

12 Q. Let me ask you this, Mr. Patel. Does the civil
13 air compliance branch have the authority to
14 commence criminal enforcement of the Title V
15 permit?

16 A. No.

17 MR. MANGO: Thank you, your Honor. I have
18 nothing further.

19 THE COURT: Okay. Let's take 15 minutes,
20 please. It will be about 11:45.

21 (Jury excused from the courtroom.)

22 THE COURT: You can step down. Thank you.
23 All right. We'll resume again at 11:45.

24 MR. MANGO: Yes, your Honor.

25 MR. LINSIN: Thank you.

1 (Short recess was taken.)

2 (Jury seated.)

3 THE COURT: Welcome back, ladies and
4 gentlemen. Please have a seat.

5 Okay. Chris, everything in order?

6 COURT SECURITY OFFICER: Yes, sir.

7 THE COURT: Okay. The attorneys and
8 parties are back, present. Of course our jury is
9 here now. Roll call waived.

10 We're resumed. Harish Patel is on the stand.
11 Direct examination has been completed. You remain
12 under oath, Mr. Patel.

13 Mr. Linsin, are you going to start the
14 cross-examination?

15 MR. LINSIN: Yes. Thank you, your Honor.

16 THE COURT: Okay. You may begin.

17 CROSS-EXAMINATION BY MR. LINSIN:

18 Q. Morning, Mr. Patel.

19 A. Good morning.

20 Q. My name is Greg Linsin. I represent Tonawanda
21 Coke Corporation. You testified on direct
22 examination that you have worked for the EPA for
23 over 25 years, is that correct?

24 A. Yes.

25 Q. And that you have conducted, I believe I heard

1 you correctly, over 200 air -- Clean Air Act
2 compliance inspections at various facilities, is
3 that correct?

4 A. That's correct.

5 Q. Have all of those inspections been in EPA
6 Region 2?

7 A. Yes.

8 Q. So have you been in Region 2 your entire career
9 with EPA?

10 A. That's correct.

11 Q. And you testified this was your first -- the
12 first coke facility you had inspected. But what
13 other types of facilities, generically, had you
14 inspected prior to this April 2009 inspection at
15 Tonawanda Coke?

16 A. Facilities that are regulated under Clean Air
17 Act. You know, could be small facilities, like gas
18 stations or fuel terminals. Could go all the way
19 up to refineries and chemical plants,
20 pharmaceutical plants.

21 Q. And New York and New Jersey as well, is that
22 correct?

23 A. Yes. New York, New Jersey, Puerto Rico and the
24 Virgin Islands.

25 Q. And you testified that you had received a

1 number of special training classes from EPA in
2 order to help prepare you for this work, correct?

3 A. That's correct.

4 Q. And one of those classes, if I heard you
5 testify correctly, was a specialized training
6 course in just how to do these types of air
7 compliance inspections, correct?

8 A. It's a class, that's correct, for basic
9 inspections at station resources.

10 Q. All right. And how long was that class?

11 A. I believe it was a three-day class.

12 Q. All right. And was it a class provided
13 internally within EPA, or did you -- were you
14 trained outside?

15 A. It's a -- you know, EPA has a training
16 contractor. In fact, when I took it, there was a
17 training contractor, and so we had to go and take
18 the class outside the EPA offices to -- at this
19 place.

20 Q. As part of that training, did you receive
21 guidance on the importance of documenting things
22 you've seen and important findings during the
23 course of an inspection?

24 A. Yes.

25 Q. And were you also trained to take notes as you

1 were going through facilities? Perhaps draw
2 diagrams or other things that would help you
3 capture the information you're observing, is that
4 correct?

5 A. That's correct.

6 Q. And you did that during your April -- during
7 your participation in the April 2009 inspection at
8 Tonawanda, didn't you?

9 A. Take notes, sir?

10 Q. Yes.

11 A. Yes.

12 Q. All right. Now -- so I can get the dynamics
13 correctly, your role as a representative of Region
14 2 in the April 2009 inspection, was that in support
15 of NEIC's inspection, or who was in charge of that
16 inspection team?

17 A. It was led by the NEIC, and we were supporting
18 them.

19 Q. All right. Now, when was the last time you
20 reviewed the notes that you took during the
21 April 2009 inspection at Tonawanda Coke?

22 A. About a week ago, sir.

23 Q. And would you agree with me that during the
24 course of the four days that you were there for the
25 inspection, you took about 14 pages of notes?

1 A. That's correct, sir.

2 Q. And those notes included data that you had
3 received about certain of the components that you
4 were inspecting, is that correct?

5 A. That's correct.

6 Q. Diagrams of some of the vessels and components
7 that you were inspecting, correct?

8 A. I had drawn diagrams in my notebook, yes.

9 Q. Yes. And you broke your notes out by days in
10 the course of your note-taking so that each day
11 begins with a date and then the information
12 recorded on the date you received it, correct?

13 A. That's correct.

14 Q. Now, during the time, during the four days you
15 spent at Tonawanda in April of 2009, how many of
16 those four days did you spend time in the
17 by-products department?

18 A. About a day and a half.

19 Q. About a day and a half?

20 A. Yes, sir.

21 Q. So there would be two and a half days you
22 weren't in by-products at all. Is that -- do I
23 understand you correctly?

24 A. That's correct.

25 Q. So you visited other parts of the plant during

1 that time?

2 A. Yes. For a lot -- for almost a day and a half
3 we were in the conference room, you know, trying to
4 get an understanding of how the facility operates
5 and trying to get an understanding of all the
6 process units at the facility. We also spent some
7 time around the coke oven battery.

8 Q. Now, you testified on direct that before, as
9 part of your planning to prepare for this
10 inspection, that you reviewed the inspection
11 background of this facility, correct?

12 A. Yes. What we have in the EPA database.

13 Q. Did you review any of the DEC files regarding
14 its history of inspection and interaction with this
15 facility?

16 A. No, sir. I just reviewed the Title V permit.

17 Q. You reviewed the Title V permit which had been
18 issued to the facility in 2002, correct?

19 A. That is correct.

20 Q. But you didn't review any of the DEC's
21 inspection records at the facility?

22 A. I don't remember that, sir.

23 Q. Do you remember that there were DEC air
24 inspection records for this facility that date back
25 to 1978? Does that refresh your recollection?

1 A. No, sir.

2 Q. Were you aware that this facility had been
3 inspected at least on an annual basis by DEC air
4 inspectors from '78 forward? Were you aware of
5 that?

6 A. Yes, sir.

7 Q. All right.

8 A. That information is in the EPA database.

9 Q. But were the results of any of those
10 inspections in the EPA database?

11 A. There is very minimal information in the
12 database.

13 Q. Let me repeat my question, please.

14 Were the results of any of those DEC air
15 inspections of the Tonawanda Coke facility in the
16 EPA database that you reviewed?

17 A. Yes, there is.

18 Q. All right. What results of those DEC air
19 inspections are in the EPA database?

20 A. Basically just says in compliance or in
21 violation.

22 Q. So a conclusion, is that correct?

23 A. That's correct.

24 Q. And do you recall that virtually all of the
25 those DEC air inspections for the Tonawanda Coke

1 facility found the facility was in full compliance
2 with its -- with the air regulations for the state
3 of New York?

4 MR. MANGO: Objection, your Honor.
5 Assuming facts not in evidence.

6 THE COURT: If he knows, I'll permit it.
7 Do you know?

8 THE WITNESS: No, sir.

9 BY MR. LINSIN:

10 Q. Do you recall that?

11 A. No, sir.

12 Q. If you had seen -- in your review of the EPA
13 database, if you had seen significant findings of
14 noncompliance, would that have stood out to you?

15 MR. MANGO: Objection, your Honor. Calls
16 for speculation, "if you had seen."

17 THE COURT: This goes back to an earlier
18 discussion that we have had on this issue. This is
19 based on the factual processes of this witness.
20 I'm going to permit it over objection.

21 You may answer.

22 THE WITNESS: Can you repeat the question,
23 sir?

24 BY MR. LINSIN:

25 Q. Of course. I will try.

1 In your review of the EPA database, if you had
2 seen significant findings of noncompliance in the
3 prior DEC air inspections for this facility, would
4 that have stood out to you?

5 A. Yes, sir.

6 Q. Would it have prompted you to inquire further
7 about what these noncompliance events were?

8 A. Yes.

9 Q. But your testimony is that you did not go to
10 the DEC files and review those inspection records
11 before you went to the facility in April 2009,
12 correct?

13 A. That's correct, sir.

14 Q. Now, I know you said it's been about a week
15 since you've reviewed your notes from this
16 inspection. If you would like to see them to
17 review yourself to respond to my next question, I'd
18 be happy to ask that they be called up.

19 But, is it accurate, Mr. Patel, that no where
20 in your notes of the four days that you spent in
21 this facility, the 14 pages of notes that you took,
22 no where is there any mention of this pressure
23 relief valve in the by-products area? Is that
24 correct?

25 A. Yes.

1 Q. Is it also accurate that no where in your
2 notes, these 14 pages of notes, is there any
3 mention of quench towers or the absence of baffles
4 in the quench towers? Is that accurate?

5 A. That's correct.

6 Q. But the fact is, while you were there -- excuse
7 me. Withdraw that question.

8 You testified on direct examination that you
9 learned later, after you left the Tonawanda Coke
10 facility, that some of your colleagues had had a
11 conversation with Mr. Kamholz and others at the
12 facility about the PRV the second week when you
13 were not there, correct?

14 A. That's correct.

15 Q. But isn't it true, Mr. Patel, that you had a
16 conversation with Mr. Kamholz about the PRV the
17 Friday, the last day you were there at that
18 facility? Isn't that true?

19 A. I don't remember.

20 Q. All right. Last month, February 13th of 2013,
21 you were interviewed by Mr. Piaggione, Mr. Mango,
22 Special Agent Conway, a Mr. Briel, another attorney
23 whose last name is Quinton, and you discussed your
24 recollections about this inspection and about the
25 Tonawanda Coke facility, correct?

1 A. That's correct.

2 Q. How long did that interview last?

3 A. I believe it was an hour. Maybe less than
4 that.

5 Q. And if I understand correctly, your present
6 testimony is that you don't recall telling those
7 attorneys and those special agents that you had a
8 conversation with Mark Kamholz that you observed
9 the pressure relief valve release on Friday while
10 you were there, which would be the 17th, I believe.
11 You don't recall telling the agents that, is that
12 correct?

13 A. I recall observing the pressure relief valve
14 during our walk-through through the plant. I don't
15 recall who we talked to on that day about the
16 pressure release valve.

17 Q. All right. Let's go there first then.

18 What day do you recall observing a release of
19 the pressure relief valve during the inspection?

20 A. On Friday.

21 Q. All right. And who was with you when you saw
22 this?

23 A. Inspectors from the New York regional office,
24 the Denver inspectors, the folks from the DEC
25 office, and representatives from the company

1 were -- the entire group was at -- was around that
2 same area.

3 Q. Can you give us those names, please? Who was
4 there?

5 A. Of who, sir?

6 Q. Yes, can you give us the names?

7 A. Of the inspectors?

8 Q. All the people you just referenced.

9 A. From the New York Region 2 office was myself,
10 Mozey Ghaffari, and Richard Khan. From the Denver
11 office we had Martha Hamre and Ken Garing. From
12 the New York City State DEC office we had Cheryl
13 Webster and Larry Sitzman. And from the plant, I
14 believe -- I know Mark Kamholz was there. There
15 were a couple other folks that I just don't
16 remember who they were.

17 Q. So this whole group was in the by-products area
18 on Friday, April 17th, 2009, correct?

19 A. That's correct, sir.

20 Q. Do you remember what time of day this was?

21 A. It was about mid morning.

22 Q. And is it your testimony that you recall this
23 pressure relief valve releasing at that time?

24 A. Yes.

25 Q. All right. And what happened then?

1 A. I remember I took at least one photograph of
2 that. I remember that somebody opened the shed to
3 show us a strip chart, a circular strip chart that
4 was used to monitor the pressure for that pressure
5 relief valve. And I remember that there was some
6 discussion going on about it. But I -- I'm not
7 sure who asked what.

8 Q. All right. Could we, please, have for
9 identification Government's Exhibit 3554.34.

10 MR. MANGO: Your Honor, one, this is the
11 notes of the special agent. This is not the notes
12 of the witness. And two, I haven't heard the
13 witness say there's any type of lack of memory
14 regarding anything right now. In fact, he just
15 gave his memory. I don't know if this is
16 appropriate to pull up on the screen at this point.

17 THE COURT: Well, he did testify about not
18 recalling whether or not there was certain entries
19 in his notes, but I don't know where this is going
20 at this point in time. So, it will not be
21 published, but it can be brought up.

22 So 3554.24?

23 MR. LINSIN: 3554.34.

24 MR. MANGO: I do note, this is not his
25 notes for the Court.

1 THE COURT: Okay. We will identify it, if
2 he can, and we will go from there.

3 BY MR. LINSIN:

4 Q. Do you see the exhibit sticker at the top
5 right-hand corner of this page Mr. Patel, 3554.34?

6 A. Yes, I do.

7 Q. Government's Exhibit, correct?

8 A. That's correct.

9 Q. All right. Now, if we may please enlarge that
10 portion.

11 MR. MANGO: Your Honor, again, I'm going
12 to object. There is no identification on what
13 these notes are, who they are. There's really no
14 purpose to show the witness these notes at this
15 point.

16 THE COURT: Well --

17 MR. MANGO: No basis. I'm sorry.

18 THE COURT: -- I don't know. It can be
19 refreshing memory if it's foundationally proper.
20 It can be an impeachment under 613, if these are
21 substantially established as the statement of this
22 particular witness. I don't know yet. Okay.
23 Let's find out where we're going.

24 BY MR. LINSIN:

25 Q. Here's what I'm going to ask you to do, sir.

1 I'm going ask you to review the portion of this
2 document that's been enlarged right now, and then a
3 small portion of the next page. I'd just like you
4 to read this to yourself and then I'm going to ask
5 you a couple of questions about your recollection
6 of the inspection itself.

7 May I have the next page, please. And just at
8 that top portion.

9 THE COURT: Ms. DiFillipo, highlight,
10 please.

11 BY MR. LINSIN:

12 Q. And just the first line on this page, actually,
13 Mr. Patel. Did you read the first line here?

14 A. Yes, sir.

15 Q. All right. If we can take this down now,
16 please.

17 Now, reviewing those notes, does that help
18 refresh your memory about who showed you the
19 circular chart in the shack beneath the pressure
20 relief valve on Friday, April 17th, 2009?

21 A. It was somebody from the facility. I just
22 don't remember exactly who it was. I remember
23 seeing the chart. I'm not sure who opened the door
24 for us.

25 THE COURT: Okay. Listen to the question.

1 All right. You want to reput it.

2 MR. LINSIN: I'll reput it.

3 THE COURT: The question calls for a yes
4 or no. Does it refresh your memory?

5 THE WITNESS: I'm sorry, sir.

6 THE COURT: That's okay. Just listen now.

7 BY MR. LINSIN:

8 Q. Having read through those notes, does it now
9 refresh your memory, as you sit here right now, do
10 you remember who showed you the circular chart
11 regarding the pressure relief valve on Friday,
12 April 17th, 2009?

13 A. No.

14 Q. All right. Do you remember less than a month
15 ago telling the people I've just named --

16 MR. MANGO: I'm going to object, your
17 Honor. If we can approach.

18 THE COURT: Is this the same --

19 MR. MANGO: He's going to read --

20 THE COURT: -- the area? You are bound by
21 the witness's answer. If you're going back into
22 that, that would not necessarily be proper. I
23 don't know what you're going to do here, though.

24 MR. LINSIN: Your Honor, I'm trying to
25 explore what this witness told the agents three

1 weeks ago about the events that he's now expressed
2 a lack of recollection about.

3 THE COURT: Okay. So, we go, Mr. Mango,
4 from his answer that no, his memory is not
5 refreshed by reading that statement, but that's not
6 all-exhaustive, so it depends on the particular
7 question that follows. So we've limited it to
8 those notes.

9 You may ask the next question.

10 MR. LINSIN: Thank you.

11 Mr. Patel, my question now is, do you remember
12 telling the attorneys for the government and the
13 special agents that I just named less than three
14 weeks ago that it was Mark Kamholz that showed you
15 this circular chart regarding the PRV at Tonawanda
16 Coke on April the 17th, 2009? Do you remember
17 that? Do you remember telling the agents that?

18 THE WITNESS: I don't remember that, sir.

19 THE COURT: Okay. And remember, ladies
20 and gentlemen, the question of the attorneys,
21 that's not evidence, okay? It's the answer of the
22 witness that you are to consider. You may consider
23 this exchange with respect to the witness's ability
24 to recall the events that took place several years
25 ago. So, this is a credibility determination that

1 you can make from this exchange, but not evidence
2 contained in the question itself.

3 BY MR. LINSIN:

4 Q. Now, you testified that there was no mention of
5 the pressure relief valve in the notes you
6 maintained regarding your inspection at this
7 facility, correct?

8 A. That's correct.

9 Q. And you also testified on direct that after you
10 got back to New York you consulted with the other
11 colleagues of yours that had completed the
12 inspection at the facility, correct?

13 A. That's correct.

14 Q. And did you learn from them what had occurred
15 on the last two days of the inspection after you
16 had departed?

17 A. Yes.

18 THE COURT: Let me ask you to keep your
19 voice up, please, Mr. Patel.

20 BY MR. LINSIN:

21 Q. Did you learn that there had been a discussion
22 regarding this pressure relief valve at the
23 closeout meeting of that inspection on Tuesday,
24 April the 21st, 2009?

25 A. Yes, I did.

1 Q. And were you told, Mr. Patel, that at that
2 closeout meeting, the company and Mr. Kamholz had
3 been requested to raise the set points on the
4 pressure relief valve, did you learn that?

5 A. I don't remember that, sir.

6 Q. Did you make any notes regarding your
7 conversations with these colleagues that had
8 completed the inspection?

9 A. I don't believe so.

10 Q. Do you recall hearing from any of them that
11 they had asked the facility to raise the set point
12 on this pressure relief valve so that it would not
13 release as often?

14 MR. MANGO: Objection, your Honor. Asked
15 and answered.

16 THE COURT: Grounds?

17 MR. MANGO: He just asked that question.
18 He said he did not know.

19 THE COURT: Yeah, I think he did.

20 Sustained.

21 BY MR. LINSIN:

22 Q. Now, you testified on direct about a couple of
23 requests for information that had been sent out and
24 that you had a hand in drafting, correct?

25 A. That's correct, sir.

1 Q. And I believe you said that you have decided
2 to -- you and your colleagues decided to send out
3 these 114 letters, if you will, because you hadn't
4 gotten all of the records that you needed during
5 the course of the inspection. Did I hear you
6 correctly?

7 A. That's correct.

8 Q. Now, at any time you were at the Tonawanda Coke
9 facility during the inspection did you ever make a
10 request for documents that was not fulfilled by the
11 company?

12 MR. MANGO: Objection, your Honor.
13 Relevance.

14 THE COURT: Overruled.

15 THE WITNESS: I just don't remember if
16 there were any specific incidents when documents
17 were not provided.

18 BY MR. LINSIN:

19 Q. Do you remember anybody saying no when you
20 asked for certain records?

21 A. Yes, I do recall that.

22 Q. And what was that in relation to?

23 A. There was engineering drawings that we had
24 requested copies of and we were told they were not
25 available. You know, these were required by the

1 regulation. And we asked for some operating data
2 information. We were told it's not available.

3 So there were instances when we asked for
4 information and we were told it's not available or
5 can't be found.

6 Q. All right. Maybe I misunderstood.

7 So you received some responses when you asked
8 for certain data or information and you were told
9 it wasn't available, correct?

10 A. That's correct.

11 Q. He -- or they couldn't locate it, correct?

12 A. That's correct.

13 Q. Do you ever remember a time when the company
14 said to you no, we have these records that you're
15 requesting, but we're not going to give them to
16 you?

17 A. I don't remember that.

18 Q. Now, you testified about these NOV's that EPA
19 issued in 2009 and I want to ask you about the NOV
20 that EPA issued in December of 2009 regarding
21 baffles.

22 Do you recall the date of that NOV?

23 A. I don't remember the exact. I know it was
24 early December 2009.

25 Q. And do you recall there being some discussion

1 within Region 2 about what was going to be in that
2 notice of violation regarding the baffles?

3 A. You are talking about internal discussion?

4 Q. Yes.

5 A. Yes. Usually the inspector would discuss his
6 findings with the manager and with counsel, and
7 together would decide whether we want to issue the
8 NOV or not.

9 Q. All right. May I, please, have Defendant's
10 Exhibit 000.08 for identification.

11 Ask you to take a look at this document,
12 Mr. Patel, and state, first of all, just from the
13 first page, whether this is a document you can
14 identify.

15 A. Yes, I can.

16 Q. And is this the NOV you were just -- I'm
17 sorry -- the notice of violation you were just
18 testifying about?

19 A. Yes, sir.

20 Q. Dated December 7th, 2009?

21 A. That's correct, sir.

22 MR. LINSIN: And -- well, your Honor, at
23 this point I would move Defendant's Exhibit 000.08
24 into evidence.

25 MR. MANGO: No objection, your Honor.

1 MR. PERSONIUS: No objection, your Honor.

2 THE COURT: Okay. 000.08 received. No
3 objection.

4 (Defendants' Exhibit 000.08 was received
5 into evidence.)

6 THE COURT: And it may be published.

7 BY MR. LINSIN:

8 Q. Now, just for everyone's ease, can we just
9 enlarge the text of the letter itself? Can you
10 identify, first of all, who is Dore LaPosta? Is
11 that how you pronounce it?

12 A. Dore LaPosta.

13 Q. Dore LaPosta, who is she?

14 A. She is the division director for the division
15 that I work for, the Division of Enforcement and
16 Compliance Assistance.

17 Q. And she was the one you testified that has been
18 delegated the authority to issue these kinds of
19 notices, is that correct?

20 A. That's correct.

21 Q. And also the request for information, is that
22 correct?

23 A. That's correct.

24 Q. All right. And based on the text in these two
25 paragraphs in the cover letter, do you know what

1 this notice of violation relates to?

2 A. Yes. This notice of violation relates to EPA's
3 findings of noncompliance at -- of the New York
4 State regulations.

5 Q. Okay. And is it correct that -- and we'll look
6 at the text of this in a moment. But is it correct
7 that one of those violations that is contained in
8 this notification related to the baffles in the
9 quench towers at this facility?

10 A. That's correct.

11 Q. Now, were you involved in preparing this notice
12 of violation?

13 A. Yes, I was working with my counsel on that.

14 Q. All right. And in the course of your preparing
15 this notice of violation, did you become aware that
16 New York State Department of Environmental
17 Conservation had issued -- agreed to -- I'm sorry,
18 agreed to an exemption for baffles in quench tower
19 number 1 at the Tonawanda Coke facility? Were you
20 aware of that at the time this NOV was issued?

21 A. I just don't remember that, sir.

22 Q. Let's pull this down, please. We'll come back
23 to it. May I please have Government's
24 Exhibit 19.17, which is in evidence, I believe,
25 your Honor. And if we could enlarge the text

1 again, please.

2 Take a moment, please, Mr. Patel, to review
3 this letter.

4 A. Okay.

5 Q. Have you ever seen this letter before?

6 A. I don't remember. I may have. I don't
7 remember seeing this letter, sir.

8 Q. Would you agree with me that this letter is
9 from the New York State Department of Environmental
10 Conservation signed by the principle air pollution
11 control engineer for Region 9 and is addressed to
12 Mr. Kamholz at Tonawanda Coke Corporation? And it
13 informs him that there is an agreement for the
14 company's request for an exemption for the baffle
15 requirement in quench tower number 1. Is that
16 what's communicated by this letter?

17 A. Yes.

18 Q. So whether you've seen this letter or not, were
19 you aware at the time you issued the NOV -- or I'm
20 sorry, Ms. LaPosta issued the notice of violation
21 in December of 2009, were you aware that New York
22 State Department of Environmental Conservation had
23 granted this facility an exemption --

24 MR. MANGO: Objection, your Honor.

25 MR. LINSIN: -- for baffles in quench

1 tower number 1?

2 MR. MANGO: This is --

3 THE COURT: There is an objection. Yes?

4 MR. MANGO: This is the same exact
5 question we asked a couple questions before putting
6 this on the screen.

7 THE COURT: I'm going to permit it.
8 Overruled.

9 You may answer.

10 BY MR. LINSIN:

11 Q. Would you like me to repeat it?

12 A. Yes, please.

13 Q. Sure. You testified a moment ago you hadn't
14 seen this letter. But my question now is, when you
15 issued -- when this notice of violation was issued
16 on December 9th of 2009 regarding the baffles in
17 the quench tower at Tonawanda Coke facility, were
18 you aware that DEC had previously granted the
19 company an exemption for baffles in quench tower
20 number 1?

21 A. I was not aware of it.

22 Q. Do you agree with me that you should have been
23 aware of it?

24 MR. MANGO: Objection, your Honor.

25 THE COURT: Overruled.

1 THE WITNESS: If I had reviewed the files
2 at DEC, I may have come across this letter and then
3 I would have been aware.

4 MR. LINSIN: Well, Mr. Patel -- can we
5 take this down? I'm sorry, please.

6 Would you agree with me that before a federal
7 agency comes in and issues notices of violation to
8 a facility that it has not inspected for quite a
9 number of years that it has a responsibility to
10 understand what the prior regulatory history had
11 been by the delegated state agency?

12 MR. MANGO: Objection, your Honor, to any
13 relevance to the charges in the indictment here,
14 which are criminal in nature.

15 THE COURT: Overruled.

16 You may answer.

17 THE WITNESS: You have to repeat your
18 question, sir.

19 BY MR. LINSIN:

20 Q. I'll try it again.

21 Would you agree with me, Mr. Patel, that before
22 a federal agency, EPA, comes in and issues a notice
23 of violation to an industrial facility, they should
24 have an understanding of what that prior regulatory
25 history had been with the state?

1 A. Yes.

2 Q. Now, let's go back, please, to -- if I may, to
3 Defendant's Exhibit 000.08. All right. Now, can
4 we have the next page, please?

5 THE COURT: Give me the exhibit number
6 again.

7 MR. LINSIN: I'm sorry, 000.08.

8 THE COURT: Thank you.

9 BY MR. LINSIN:

10 Q. Now, this is a -- the second page of the cover
11 letter with several CCs, correct?

12 A. That's correct.

13 Q. And all of these individuals are the New York
14 State Department of Environmental Conservation
15 officials, correct?

16 A. That's correct.

17 Q. Next page, please.

18 And let's just set this in perspective. A
19 notice of violation generally has structure to it
20 where the statutory authority is set out and then
21 you, as Mr. Mango said, get to the meat of the
22 notice, is that correct?

23 A. That's correct.

24 Q. Okay. Let's go forward, then, to the next
25 page.

1 Everything on this page is headed statutory and
2 regulatory background, correct?

3 A. Yes.

4 Q. Next page, please.

5 Now, beginning with the lower portion of this
6 page -- can we enlarge that? These are factual
7 findings that are summarized based upon your
8 inspection at the facility in April of 2009,
9 correct?

10 A. Yes.

11 Q. All right. Next page, please. Next page,
12 please.

13 MR. PERSONIUS: Your Honor, could we get
14 this page number maybe noted for the record?

15 MR. LINSIN: I apologize. Thank you, Rod.
16 We are on page number 5999 of the Bates number at
17 the bottom right-hand corner -- I'm sorry. The
18 page number of the exhibit is 0007, I believe.

19 THE COURT: Let's try this again. Because
20 there is --

21 MR. LINSIN: Can we get this enlarged?
22 Yes. So the page number here is D000-08.000007.

23 THE COURT: You said our Bates number?
24 There is another number on there too.

25 MR. LINSIN: This is the exhibit number,

1 your Honor. I apologize. The exhibit number is
2 here. But I was trying to reference the exhibit --
3 this is the Bates number, but the exhibit number is
4 tied to the exhibit I had called up. So I was
5 trying to give us a record that would be tied to
6 the exhibit we were working in.

7 THE COURT: This exhibit number is 000.08.
8 And this is another --

9 MR. LINSIN: This is a page in this
10 document, in this exhibit.

11 THE COURT: All right. And then it has an
12 actual page number and it has a Bates number too?

13 MR. LINSIN: Yes, it does, your Honor.

14 THE COURT: Okay. Who designed that
15 system, Mr. Linsin?

16 MR. PERSONIUS: Your Honor, I'm sorry for
17 my question.

18 THE COURT: Okay. All right. No, but we
19 need to clarify it for the record. That's the
20 point.

21 MR. LINSIN: I should have done that, your
22 Honor. I apologize.

23 THE COURT: Okay. Please.

24 BY MR. LINSIN:

25 Q. Now, do you see on this page, Mr. Patel, the

1 findings that relate to the baffles?

2 A. Yes.

3 Q. All right. And if we can enlarge that portion
4 of the page, please.

5 And can you read item 17, please?

6 A. "During the EPA inspection and in Tonawanda
7 Coke's response to Question 8A of the 114 letter,
8 Tonawanda Coke indicated that the quench towers at
9 the facility are not equipped with any baffles."

10 Q. All right. And so that was a finding upon
11 which this notice of violation was based, is that
12 correct?

13 A. That's correct.

14 Q. And just for -- to be clear, the reference here
15 is to quench towers, plural, correct?

16 A. That's correct.

17 Q. All right. And if we can go back to the full
18 page, please.

19 Is it accurate that the substance of this
20 notice of violation required Tonawanda Coke to
21 install baffles in both of the quench towers at the
22 facility?

23 A. That's correct.

24 Q. All right. Now, we can bring this down,
25 please.

1 Who is Ken Eng, E-N-G?

2 A. Ken Eng is my manager. He's the branch chief
3 for the air compliance branch.

4 Q. The air compliance branch in Region 2?

5 A. That's correct.

6 Q. And was he involved with you in the development
7 of this NOV regarding the baffles?

8 A. Yes. He was informed that we were going to
9 issue this NOV or drafting this NOV to be issued.

10 Q. Now, I want to direct your attention -- you
11 recall that NOV is issued on December 7th, 2009,
12 correct?

13 A. Yes.

14 Q. Do you recall having conversations with Mr. Eng
15 later that same month, possibly December 30th,
16 2009, regarding this NOV?

17 A. I don't recall the exact conversation.

18 Q. My question, first of all, was, do you recall
19 having any conversation with Mr. Eng late
20 December 2009 regarding this NOV?

21 A. I don't remember.

22 Q. Do you recall talking with Mr. Eng in late
23 December 2009 about the realization that New York
24 State Department of Environmental Conservation had
25 issued an exemption for baffles in quench tower

1 number 1?

2 A. I don't remember that, sir.

3 Q. May I please have Defendant's Exhibit N marked
4 for identification? And if we may go to the second
5 page of this exhibit.

6 I'm going to ask you to read -- do you
7 recognize this as an email from the EPA's system?

8 A. Yes, I do.

9 Q. All right. To yourself, if you would just read
10 the top portion of this page, and then I will ask
11 you a separate question about it.

12 A. Okay.

13 Q. Okay. If we can pull this down, please.

14 Now, the question I want to ask you is whether
15 you remember learning in December of 2009 that
16 Tonawanda Coke had requested in its application for
17 Title V permit, requested an exemption for baffles
18 in quench tower number 1, but that somehow that
19 exemption had just been missed and had not been
20 placed in the facility's Title V permit? Do you
21 recall learning that?

22 A. Based on the email?

23 Q. Do you have an independent memory of that now?

24 A. No, sir.

25 Q. Do you have a memory now of talking to Mr. Eng

1 about that exemption for baffles in quench tower
2 number 1 in December of 2009?

3 MR. MANGO: Your Honor, objection. This
4 has gone on a little bit. The government intends
5 to show that the defendants used the west quench
6 tower more than 10 percent of the time. What a
7 civil EPA administrator thinks is appropriate in
8 his civil case is a matter -- is something that the
9 defendants can oppose in civil litigation.

10 MR. LINSIN: Your Honor --

11 MR. MANGO: It has no bearing on the
12 bringing of this criminal case is irrelevant.

13 THE COURT: Mr. Linsin?

14 MR. LINSIN: Well, I don't intend to make
15 a speaking objection like that, your Honor. I'm
16 simply asking if this witness was aware that --
17 whether he had had a conversation with Mr. Eng
18 about the absence of this exemption in the Title V
19 permit. The government introduced this NOV. We
20 have asked questions about the NOV. And I'm trying
21 to explore what this witness knew about the
22 confusion regarding this Title V permit. If his
23 answer's no, I'm going to move on, your Honor.

24 MR. MANGO: Again, the government's
25 concern is the relevancy to the criminal

1 indictment. This is getting far afield from
2 relevant to the criminal indictment. We're talking
3 about civil NOV's. That's the point, your Honor.

4 THE COURT: But knowledge is an element,
5 is it not?

6 MR. MANGO: What happens after the time --
7 the relevant time period in the indictment has no
8 bearing on knowledge. Knowledge is before the
9 period. Count 1 of the indictment goes back
10 to 2005.

11 THE COURT: All right. I'm going to allow
12 the question.

13 You may answer the question, and then
14 Mr. Linsin is going to go forward.

15 Do you have a recollection?

16 BY MR. LINSIN:

17 Q. You're going to ask me to repeat it, aren't
18 you?

19 A. No. I don't recall any discussion with
20 Mr. Eng.

21 Q. Now, you filed two -- I'm sorry.

22 In June of 2009 you filed a report and sent it
23 to Mr. Eng about your findings based on your
24 inspection at the Tonawanda Coke facility in April
25 of that year, correct?

1 A. That's correct.

2 Q. Does it fit with your recollection that this --
3 your report is about six and a half pages,
4 single-spaced typed?

5 A. That's correct.

6 Q. And it attached a number of photographs, is
7 that correct?

8 A. Yes, sir.

9 Q. And that first version of the report, as you
10 just said, was issued in June of 2009, correct?

11 A. Yes.

12 Q. And you signed it, right?

13 A. Yes, sir.

14 Q. And isn't it accurate, Mr. Patel, that in that
15 report of your findings you make no mention
16 whatsoever of this pressure relief valve? Is that
17 correct?

18 A. That's correct.

19 Q. And no mention whatsoever of the absence of
20 baffles in either of the quench towers at the
21 facility. Is that also correct?

22 A. Yes, sir.

23 Q. That report that we just -- you just testified
24 about was reissued back later that year in December
25 of 2009, wasn't it?

1 A. That's correct.

2 Q. And at that time -- on December 7, 2009,
3 correct?

4 A. Yes.

5 Q. The very same date that the NOV was issued
6 regarding the baffles, correct?

7 A. That's correct.

8 Q. And at that point, you signed that reissuance
9 of this report, December 7th, and your superior Ken
10 Eng signed it December 7th, 2009, correct?

11 A. Yes.

12 Q. And no mention of the pressure relief valve in
13 this six-page report, correct?

14 A. Yes.

15 Q. And no mention of baffles in this report?

16 A. Yes.

17 THE COURT: Let me ask you, was the report
18 of June 9th that was reissued in December of '09,
19 were there differences in that report?

20 THE WITNESS: Yes, your Honor.

21 THE COURT: Okay.

22 BY MR. LINSIN:

23 Q. So it had been revised to some extent, correct?

24 A. Basically we had redacted any process type of
25 data from the facility, you know, in terms of

1 production data or gas production information.

2 Q. But the core findings remain the same, correct?

3 A. That's correct.

4 Q. And you reported -- in both versions of this
5 report, you reported that Tonawanda Coke was
6 recycling the coal tar sludge that was generated on
7 site, didn't you?

8 A. Yes.

9 Q. And you reported they were recycling it by
10 mixing it back into the coal, correct?

11 A. That's correct.

12 MR. LINSIN: Your Honor, if I may, I
13 believe I'm almost done. It might make things a
14 little bit easier if we could break and I could
15 collect things. It would be very brief upon
16 return.

17 THE COURT: Okay.

18 MR. LINSIN: Thank you.

19 THE COURT: Excuse me. Jury able to
20 handle a lunch break at this point? Okay. Keep
21 your minds open. Please don't discuss the case.
22 One of the few places in the country to have a
23 gorgeous day today. Go out there and enjoy it.
24 We'll see you back here -- be here at 2:00 o'clock.
25 We'll start between 2:00 and 2:15, just to make

1 sure.

2 All right. Thank you very much.

3 (Jury excused from the courtroom.)

4 THE COURT: You may step down. Okay.

5 We'll see you back here 2:00ish.

6 MR. LINSIN: Thank you, your Honor.

7 MR. MANGO: Yes, your Honor.

8 MR. PERSONIUS: Thank you, Judge.

9 (Lunch recess was taken.)

10 (Jury not present in the courtroom.)

11 THE COURT: Mr. Patel, if you would,
12 please.

13 Is there a preliminarily issue? Hold on one
14 second.

15 MR. LINSIN: Just very briefly, your
16 Honor. If the Court would recall with an earlier
17 witness we had introduced an exhibit,
18 Defendant's 000 -- I'm sorry, 000.07. And it was
19 the DEC notice of violation regarding baffles. We
20 have now introduced and published 000.08.

21 And if the Court may remember, those two
22 documents, by whim of the parties was redacted and
23 certain language regarding enforcement options was
24 redacted from both those documents.

25 My one request, your Honor, I intend very

1 briefly to make reference to that earlier Exhibit
2 000.07. Both of those documents, which are now in
3 evidence, have the word "redacted" in them where
4 the -- that material was removed. I request that
5 the Court just advise the jury that that should not
6 concern them in any way, that it just reflects the
7 removal of irrelevant Information.

8 THE COURT: Okay. Yeah, I see it here.

9 All right. No objection to that, Mr. Mango?

10 MR. MANGO: No, your Honor.

11 THE COURT: Okay.

12 MR. LINSIN: Thank you, your Honor.

13 THE COURT: All right. Sure, Mr. Linsin.

14 Mr. Personius, that works from your standpoint?

15 MR. PERSONIUS: Thank you, Judge.

16 THE COURT: Okay. Okay. Chris, if you
17 would please.

18 (Jury seated.)

19 THE COURT: Were you taking complaints
20 from the jurors, Chris, about the weather?

21 COURT SECURITY OFFICER: Certainly no
22 complaints.

23 THE COURT: All right. Welcome back.
24 Please have a seat.

25 Okay. Another good Friday afternoon. We're

1 ready for business. We're going to move forward.
2 The jury is here. Roll call waived. All of those
3 attorneys that you love to see day in and day out,
4 they're here. The parties are here. Roll call
5 waived. And Mr. Harish Patel is back on the stand.
6 He remains under oath.

7 We're at the point of concluding
8 cross-examination by Mr. Linsin. Mr. Linsin is
9 going to be referring, I think, at various points
10 to two documents that you will get to see that have
11 been received into evidence. And they're marked as
12 Defendants' Exhibits 000.07 and 000.08. In certain
13 parts of the exhibits respectively, there's a
14 reference to something being redacted. What that
15 really means, for your information, is that there
16 was information there which I directed or -- which
17 was directed to be taken out. It's not relevant or
18 material to what you have to decide. So, the
19 exhibit, as you will see it, is the relevant
20 exhibit for your consideration.

21 Okay. All right. Mr. Linsin.

22 MR. LINSIN: Thank you, your Honor.

23 May I proceed, Judge?

24 THE COURT: Certainly.

25 BY MR. LINSIN:

1 Q. Good afternoon, Mr. Patel.

2 A. Good afternoon.

3 Q. Ms. Henderson, may I please have Defendant's
4 Exhibit 000.08, which has been admitted into
5 evidence?

6 Now, Mr. Patel, you remember this exhibit you
7 testified about earlier today, the cover letter for
8 EPA's NOV concerning the baffles, correct?

9 A. Yes.

10 Q. And if we could go to the second page of this
11 cover letter, please, Ms. Henderson. And for the
12 record, it is 000.08, page 2.

13 Now, what is the -- who is the first name
14 listed in this list of carbon copies at the top of
15 this page?

16 A. Mr. Larry Sitzman.

17 Q. And was he one of the people present in the
18 April 2009 inspection?

19 A. Yes, he was.

20 Q. Was he one of the people with whom you had
21 communicated regarding the results of that
22 inspection?

23 A. We discussed our preliminary findings with him,
24 yes.

25 Q. Okay. All right. If we could take this down,

1 please. And if we could now call up 000.07,
2 Defendant's 000.07 in evidence.

3 And ask, Mr. Patel, if, first of all, you
4 recognize this document? Do you know what this is?

5 A. Yes.

6 Q. All right. Do you recognize it as a notice of
7 violation sent to Tonawanda Coke Corporation by
8 Mr. Sitzman on April 28th of 2009? I'm sorry,
9 October 28th of 2009.

10 A. Yes.

11 Q. All right. And if you would go to the second
12 page of this document, please, and enlarge that
13 portion, please.

14 Ask you to read what is contained in the
15 "comments" section of this notice of violation.

16 A. Based on the results of a --

17 Q. I'm sorry. You don't need to read it out loud.
18 Read it to yourself. Just refresh your memory
19 about this, please.

20 A. I'm sorry.

21 Okay.

22 Q. All right. Have you had a chance to read it?

23 A. Yes.

24 Q. All right. Now, this notice of violation from
25 DEC was issued about five or six weeks before EPA's

1 notice of violation regarding the baffles, correct?

2 A. That's correct.

3 Q. And this notice of violation by DEC relates to
4 baffles in quench tower number 2, doesn't it?

5 A. Yes, it does.

6 Q. And do you know which of the two quench towers
7 number 2 is at the facility?

8 A. Number 2 is the east quench tower.

9 Q. All right. The east quench tower, the lower
10 quench tower, correct?

11 A. That's correct.

12 Q. And my question -- this requires -- references
13 the absence of baffles in that quench tower, right?

14 A. That's correct.

15 Q. And says nothing about baffles in quench tower
16 number 1, correct?

17 A. That's correct.

18 Q. This notice of violation. Sorry.

19 A. That's correct.

20 Q. Okay. Now, if we can take this down, please.

21 My question, Mr. Patel, is, were you aware in
22 October or November of 2009 that the New York State
23 Department of Environmental Conservation had issued
24 a notice of violation to Tonawanda Coke regarding
25 the baffles in just quench tower number 2?

1 A. I don't remember exactly when we got a copy of
2 this NOV.

3 Q. All right. Let me try it a different way.
4 When you were making a decision about whether EPA
5 was going to issue its notice of violation
6 concerning baffles, did you talk to Mr. Sitzman or
7 anyone else at DEC?

8 A. I don't think we did.

9 Q. So when you issued your notice of violation
10 regarding baffles, you didn't know that five or six
11 weeks earlier the state of New York had issued its
12 own separate notice of violation regarding baffles,
13 is that your testimony?

14 MR. MANGO: Objection, your Honor. Asked
15 and answered and irrelevant. He said he didn't
16 know, and I don't see the relevance in this line of
17 questioning.

18 THE COURT: Relevance?

19 MR. LINSIN: Your Honor, the relevance
20 goes, your Honor, to knowledge of conditions
21 regarding these baffles that had been authorized by
22 the state of New York. My initial question --

23 THE COURT: Yeah, but you're referring --
24 I'm sorry. You're referring to a violation notice,
25 but only as to the one quench tower as opposed to

1 the other.

2 MR. LINSIN: That is exactly correct, yes,
3 sir.

4 MR. MANGO: Your Honor, the only knowledge
5 element in this case is the knowledge of the
6 defendants in a condition -- in a violation of
7 their condition in the Title V permit. That's
8 really all that's relevant, is -- when we look at
9 the charges, it's an element of the charge.
10 Knowledge of EPA is irrelevant.

11 MR. LINSIN: Your Honor, there has been
12 abundant testimony from a number of witnesses about
13 the coordination between federal and state
14 authorities regarding this particular inspection,
15 regarding the overall enforcement effort at this
16 facility. And this is but one facet of that
17 process of coordination that has been the substance
18 of much of the testimony in this trial.

19 THE COURT: Okay. While the scope is as
20 you describe it, the knowledge, though, of, for
21 example, Mr. Patel, how is that actually relevant
22 to the knowledge of either of the defendants in
23 this case?

24 MR. LINSIN: Your Honor, I have not
25 contended that it was. That was never my argument.

1 I understand the elements relate to the knowledge
2 of the defendants' charge. But the process of
3 coordination between two law enforcement agencies,
4 between two regulatory agencies is an important
5 component. What each of those knew about what the
6 other had done, what things had been authorized and
7 what had not been authorized, that is a very
8 critical element that does relate directly to
9 whether or not violations occurred or not. And
10 this is part of that general fabric of
11 communication.

12 MR. MANGO: Your Honor, the government
13 still contends it's irrelevant. The civil air
14 compliance branch in New York City is not a law
15 enforcement agency, as just mentioned. The New
16 York State Department of Environmental Conservation
17 is not -- in terms of the air division, is not a
18 law enforcement agency. This has no bearing on the
19 criminal case. Again --

20 THE COURT: Let me talk to the attorneys
21 at the bench, please, for a second.

22 (Side bar discussion held on the record.)

23 THE COURT: From the defense standpoint,
24 is it still part of the defense that certain
25 ongoing alleged violations were in a sense condoned

1 by one of the two enforcement agencies, DEC and/or
2 EPA?

3 MR. LINSIN: Yes, it is, your Honor.
4 Either expressly or implicitly that we have
5 certainly made that clear from all of our pretrial
6 submissions --

7 THE COURT: It was my fault. I thought
8 Mr. Linsin was finished.

9 MR. LINSIN: Your Honor, we simply see
10 this as one element of that process of interaction,
11 whether one agency knows what the other agency has
12 authorized. Regulatory agencies, because these
13 criminal charges flow from regulatory violations.
14 And so understanding what that coordination was,
15 what the understanding was, is relevant to the very
16 defense we have noticed in this case.

17 THE COURT: All right. I mean, that's
18 what I was getting at it. It does appear to me to
19 be relevant.

20 MR. MANGO: Here's my concern, your Honor.
21 I believe counts -- I believe it's Counts 10
22 through 15, I'd have to check, the counts relating
23 to the eastern quench tower, those stop in 2009.
24 The charging period is up to November.

25 THE COURT: Of 2009?

1 MR. MANGO: Of 2009. All of this -- these
2 NOVs, the DEC one, is before the charging period.
3 But the period after, this EPA NOV, it's after the
4 time period of the indictment of the charges.

5 THE COURT: Yeah, but what the EPA
6 agent -- that's not the right term.

7 MR. MANGO: Right.

8 THE COURT: The EPA person knew with
9 respect to what DEC had authorized or approved
10 prior to the relevant period of the indictment is
11 relevant, isn't it?

12 MR. MANGO: I don't think so, because
13 that's all in the civil context. It's civil. It
14 has no bearing on the criminal. The criminal
15 elements are that the defendants operate a
16 facility --

17 THE COURT: Let me interrupt for a second.
18 But, I think, arguably is relevant to what the
19 defendants knew the purposes of the criminal case,
20 when it's linked to what they were led to believe
21 or not in the civil actions that were ongoing
22 between both the DEC and EPA. So I mean, it does
23 relate to their knowledge, doesn't it?

24 It's not really making a distinction between
25 civil and criminal. It's what information they had

1 that caused them to do what they did or not do as
2 far as what led to the criminal charge.

3 MR. MANGO: That's correct, your Honor.
4 The defense really hinges down to what DEC has
5 authorized, not what EPA has authorized. In our
6 criminal case, we made it abundantly clear, we're
7 adopting the position of DEC, that there was an
8 exemption for the western quench tower to use it
9 less than 10 percent of the time without baffles.

10 THE COURT: Sure. But you have to prove
11 that the quench tower was used more than 10 percent
12 of the time --

13 MR. MANGO: Right.

14 THE COURT: -- in order for you to prevail
15 on that argument. But if you don't, then the
16 arguments of the defense with respect to knowledge
17 and whether they were misled or whether they were
18 acting in good faith is a --

19 MR. MANGO: But any correspondence with
20 the EPA comes well after the charges in the
21 indictment. The indictment --

22 MR. LINSIN: If I may make a point on
23 that. Counsel has indicated that count 10 of the
24 indictment --

25 MR. MANGO: I meant Counts 11 through 15.

1 Count 10 relates to the west quench tower which had
2 no baffles up until December 31st. Count 15 stops
3 on November 15th of '09. That's well before any
4 EPA NOV was issued, which we've already gone
5 through.

6 THE COURT: So your argument is that
7 because we're talking a period of time after
8 November of 2009, this is irrelevant because it's
9 after the charging period.

10 MR. MANGO: Exactly. November 15 of 2009
11 is the end date for the eastern quench tower
12 charges. Anything that happens after that date is
13 totally irrelevant.

14 THE COURT: Yeah, but -- but the
15 indictment happened after that date.

16 MR. MANGO: Well, your Honor, that's --
17 that -- it doesn't matter when the indictment
18 happens. I mean, there's issues of presenting a
19 case to a grand jury. That's what I'm trying to
20 get across in the witness. If that's allowed to
21 come out, that there's been this delay in
22 indictment, then I've got to be able to get out,
23 which I was objected to and sustained, that
24 there's -- that the civil case has no bearing on
25 the criminal case. Because then there's going to

1 be an improper inference that we acted criminally,
2 we acted improperly by bringing an indictment when
3 we did. When the indictment only goes up to
4 November 15th of '09.

5 MR. LINSIN: Your Honor, can I correct the
6 record so we're clear on this? The exemption that
7 is in issue here relates to quench tower number 1,
8 the west quench tower.

9 THE COURT: Right. Which is the
10 infrequently used quench tower?

11 MR. LINSIN: Exactly. Count number 10 of
12 the indictment which addresses that quench tower
13 runs through December 31st, 2009. That's through
14 the end of December. Not mid November. Through
15 the end of December. All the questions I'm asking
16 this witness relate to communications in December
17 of 2009. Not after.

18 MR. MANGO: Your Honor, I'm talking --
19 we're talking about two different quench towers
20 here. Count 15 relates to --

21 THE COURT: Quench tower 1.

22 MR. MANGO: Count 15 relates to quench
23 tower number 2, to the eastern quench tower. That
24 ends on November 15th of '09. That's in the
25 indictment.

1 We're getting into the area where we briefed
2 this in pretrial litigation to get this civil
3 litigation out of this case. And it was agreed to,
4 and we are back here again talking about it.
5 That -- it's going to confuse the issue that
6 somehow we're precluded or acted improperly by
7 bringing an indictment when we're not bound at all
8 by what the civil partners do.

9 THE COURT: I agree that you were
10 concerned about the mixing of the two, the civil
11 and the criminal litigation. But, frankly, what
12 took place resulted in both. Whatever happened in
13 the -- that led to the civil citing the notices,
14 that's the same period that resulted in the period
15 of time that's under indictment, right? So you
16 can't really --

17 MR. MANGO: But we can also get into the
18 fact that there was a criminal complaint issued in
19 December 23rd of 2009, which is when Defendant
20 Kamholz was arrested at the facility, which is well
21 before the time of the indictment. I don't want to
22 bring that up, but if we have to, we're going to
23 have to. Then it's going to confuse the issue of
24 why we waited until July of '10 to bring an
25 indictment. It's going to get messy.

1 THE COURT: Well, I don't think it has to
2 be, I don't think it is, and I don't think the
3 defense necessarily is arguing that the indictment
4 was brought as -- in a manner of the bad faith.
5 You're not saying that. You are saying that
6 whatever bears on the knowledge of the defendants,
7 all right, with respect to the criminal charges, is
8 what's at issue here.

9 MR. MANGO: I think in opening there was a
10 reference that -- and then months afterwards, eight
11 months, nine months, whatever it was, the
12 government then felt compelled to bring this
13 indictment. There was that reference in opening.
14 And that's what -- that's what struck me as
15 concerning, and that's why I keep wanting to raise
16 this with the Court.

17 THE COURT: But they're saying that the
18 defendants knew such and such by virtue of what DEC
19 led them to believe. Is that what you're arguing?

20 MR. LINSIN: Yes, your Honor. Over many
21 years by action, inaction, you --

22 THE COURT: Condoning?

23 MR. LINSIN: Exactly.

24 MR. PERSONIUS: Judge, if I only add this,
25 you keep referring to knowledge, and it ultimately

1 is knowledge. But it goes, really, to state of
2 mind, the state of mind of these people who are
3 representing the corporation, and what that state
4 of mind was based upon their interaction with both
5 DEC and EPA. And to say that what EPA civil is
6 doing doesn't matter, EPA civil is the only people
7 they had contact with. They didn't have a contact
8 with criminal at that point.

9 MR. MANGO: No, they did. There was a
10 criminal search warrant in December of '09.

11 THE COURT: No. I think -- I think it's
12 unfair to preclude limited inquiry in this area.
13 I'm going to overrule your objection. I'll allow
14 you to do it. In my view, tangentially -- I don't
15 know if that's the right word. In my view, it's
16 relevant with respect to the -- it can even be a
17 state of mind of both of the defendants with
18 respect to the conduct that they're charged with in
19 the criminal cases. I don't think you can separate
20 them out to the extent and draw that blanket line,
21 Mr. Mango, that will require that nothing that
22 happened in the civil investigation is relevant to
23 the period of time that relates to the indictment
24 that was returned. You can't do that. It's too
25 intertwined, but it's not necessarily something

1 that has to be confusing. We're talking about an
2 isolated situation of what those notices of
3 violation really consisted of at the administrative
4 level and in late December, I think, of 2009. So
5 I'm going to allow it.

6 MR. MANGO: Okay.

7 (End of side bar discussion.)

8 THE COURT: Okay. The government's
9 objection is overruled.

10 You may proceed, Mr. Linsin.

11 MR. LINSIN: Thank you, your Honor.

12 BY MR. LINSIN:

13 Q. Mr. Patel, we were talking about December
14 of 2009, and I had asked you whether you had had
15 any conversations with Mr. Sitzman before you and
16 EPA issued your NOV in 2009.

17 Concerning the notice of violation that DEC
18 issued, I believe you testified you had not spoken
19 to him, is that correct?

20 A. That's correct.

21 Q. Now, my only other question, Mr. Patel, is, had
22 you spoken to anybody in -- anyone in DEC or read
23 anything at all that led you to understand that
24 five weeks before EPA issues its notice of
25 violation regarding both quench towers, baffles in

1 both quench towers, that DEC had issued a notice of
2 violation regarding just the baffles in quench
3 tower number 2?

4 A. I did not.

5 MR. LINSIN: All right. I have nothing
6 further, your Honor. Thank you.

7 THE COURT: All right, Mr. Linsin. Thank
8 you.

9 Mr. Personius.

10 MR. PERSONIUS: Thank you, Judge.

11 CROSS-EXAMINATION BY MR. PERSONIUS:

12 Q. Good afternoon, Mr. Patel.

13 A. Good afternoon.

14 Q. I took the opportunity during the lunch break
15 to introduce myself. Again, I'm Rod Personius and
16 I represent Mark Kamholz.

17 Mark, would you stand up, please?

18 Do you recognize Mr. Kamholz from your
19 inspection?

20 A. Yes, I do.

21 Q. Okay.

22 MR. PERSONIUS: Your Honor, if the record
23 may reflect the witness identified Mr. Kamholz.

24 THE COURT: Okay. The record will reflect
25 the identification of Defendant Mark Kamholz by

1 Harish Patel, the witness.

2 MR. PERSONIUS: Thank you, your Honor.

3 BY MR. PERSONIUS:

4 Q. During your direct examination by Mr. Mango
5 this morning, Mr. Patel, do you remember that you
6 were asked about a Section 114 letter that was
7 issued by the EPA to Tonawanda Coke in September
8 of 2009?

9 A. Yes, I do.

10 Q. Okay. I want to spend a little time, not a lot
11 of your time, but a little bit of time going over
12 that with you, if that's okay.

13 A. That's fine.

14 Q. Thank you. You were involved in the drafting
15 of that letter?

16 A. Yes, I was.

17 Q. Can you remember who else participated in
18 drawing up that letter?

19 A. It would have been the other inspectors from
20 the New York office that came along on the
21 inspection and regional counsel that worked with me
22 on the case.

23 Q. Okay. Help me if I leave anyone out. But my
24 recollection is there was a Mr. Khan who was at the
25 inspection?

1 A. Yes, Mr. Richard Khan was at the inspection.

2 Q. And Mr. Eng?

3 A. No. Mr. Eng was not at the April 2009
4 inspection.

5 Q. Okay. Mr. Khan. And Mr. Ghaffari?

6 A. That's correct, Mozey Ghaffari.

7 Q. And by the way, did Mr. Khan and Mr. Ghaffari
8 stay over into that second week of the inspection?

9 A. No, they did not.

10 Q. I see. And then the other person that helped
11 with the letter would have been some attorney from
12 EPA?

13 A. That's correct.

14 Q. And is that -- what's that person's name?

15 A. Erick Ihlenburg.

16 Q. Could you spell is that for the court reporter?

17 A. Erick, E-R-I-C-K, Ihlenburg, I-H-L-E-N-B-U-R-G.

18 Q. And that's a male?

19 A. Yes.

20 Q. And Mr. Ihlenburg had not been present at any
21 part of the inspection?

22 A. That's correct.

23 Q. Okay. Did anybody from NEIC in Denver
24 participate in preparing the 114 letter?

25 A. No.

1 Q. Okay. So when that letter is being prepared,
2 no one participated who had been involved in the
3 last two days of the April 2009 inspection, is that
4 correct?

5 A. Yes.

6 Q. Okay. And in particular, there was an -- if
7 you know, on the last day of the inspection, there
8 was what was called a closing conference?

9 A. That's correct.

10 Q. All right. And Mr. Ghaffari and Mr. Khan and
11 yourself were not there for that conference?

12 A. That's correct.

13 Q. Now, was there one of the three of you who took
14 it upon himself -- or one of the four of you,
15 because Mr. Ihlenburg was involved too -- to do the
16 initial draft of the letter?

17 A. Yes, I was tasked to do that.

18 Q. And in the meat of it was the request that
19 followed the letter, right? The attachment to the
20 letter, that's really what you were working on?

21 A. That's correct, yes. The questions.

22 Q. I'm sorry to confuse you. It's my fault. I
23 apologize.

24 The letter itself is essentially a form?

25 A. The first half of that letter?

1 Q. Yes.

2 A. It's -- yes, it's basically form.

3 Q. And you plug some names into it and some dates,
4 but the real meat of it is the attachment that has
5 the specific request for information?

6 A. That's correct.

7 Q. And after you drafted it, it was reviewed by
8 the other three gentlemen?

9 A. Yes.

10 Q. And in terms of the fashion in which that was
11 drafted, there was no limitation on the words you
12 used, right?

13 A. That's correct.

14 Q. Now, could we please have Government
15 Exhibit 126 -- it's in evidence -- put on the
16 screen.

17 This is the first page of Government
18 Exhibit 126 that's on the screen, correct?

19 A. Yes.

20 Q. And when I talked about the first part being a
21 form, that would be -- this page would be part of
22 the form part of the letter, right?

23 A. Yes. Usually the cover letter just quickly
24 summarizes why we're sending this. And then
25 sections after that are basic form.

1 Q. Could we go to the second page, please, Lauren.

2 This would be more, if it's a fair description,
3 the form part of the letter?

4 A. Yes.

5 Q. And to the third page, please, Lauren.

6 And this would be the last page of the form
7 part?

8 A. That's correct.

9 Q. Thank you.

10 Could we go back to the first page please,
11 Lauren. Thank you.

12 Now, before you did your draft of the specific
13 request for information, did you consult with
14 anybody from NEIC?

15 A. Yes, we did.

16 Q. All right. When you say "we" who is "we"?

17 A. Me and the other two inspectors that came to
18 the inspection with me.

19 Q. I see. And how did that -- how was that
20 consultation accomplished?

21 A. It was done over the phone.

22 Q. It was -- was it one phone call?

23 A. No, I believe there was several phone calls.

24 Q. All right. And who participated from NEIC?

25 A. Could have been either Martha or Ken or both of

1 them.

2 Q. You when you say "Martha," you mean Martha
3 Hamre?

4 A. That's correct. Martha Hamre or Ken Garing.

5 Q. Or Mr. Garing?

6 A. That's correct.

7 Q. You don't remember who?

8 A. We had several calls, so, you know, I just
9 don't recall exactly on which call who was on.

10 Q. Okay. And we don't expect you to remember all
11 the specifics of those conversations. But,
12 generally, what was discussed during those
13 conversations with NEIC?

14 A. Basically our preliminary observations from the
15 inspection, at least the first week, and then what
16 Ms. Martha and Mr. Garing observed during the
17 second week of the inspection.

18 Q. Okay. And was it -- was it, for example,
19 brought to your attention that there had been
20 further discussion, the -- on two different days,
21 the second week regarding the operation of this
22 pressure relief valve?

23 A. Yes.

24 Q. You were informed of that?

25 A. Yes.

1 Q. And was it brought to your attention that it
2 had been disclosed during those discussions that
3 that pressure relief valve was releasing roughly
4 every 30 minutes?

5 A. That's correct.

6 Q. So you knew that?

7 A. Yes.

8 Q. Okay. And was more information given to you
9 about the fact that that pressure relief valve was
10 releasing, or was being said that it was releasing
11 each time there was a reversal in the ovens?

12 A. That's correct.

13 Q. You were aware of that information too?

14 A. Yes.

15 Q. All right. And did you speak with -- you --
16 yourself or you and Mr. Khan and Mr. Ghaffari
17 before you prepared these information requests, did
18 you speak to anybody from the Department of
19 Environmental Conservation?

20 A. I don't recall.

21 Q. And specifically who I would be thinking --

22 A. It's Mr. Sitzman or Ms. Webster.

23 Q. Because they had been present at the
24 inspection?

25 A. That's correct.

1 Q. Did you talk to either of them before preparing
2 the information request in September?

3 A. I don't remember.

4 Q. All right. And had you talked to Ms. Webster
5 or Mr. Sitzman at any time from the time of the
6 inspection until you prepared the information
7 request?

8 A. I did.

9 Q. Okay. And do you remember when that was and
10 who you talked to?

11 A. No, I don't.

12 Q. Do you remember the substance of what was
13 discussed in that conversation?

14 A. I don't recall.

15 Q. All right. And did you have -- in preparing
16 the information request, did you have access to the
17 DEC's, Department of Environmental Conservation's,
18 file on Tonawanda Coke?

19 A. The access we had was only to the Title V.

20 Q. To the Title V permit?

21 A. That's correct.

22 Q. And so even the application for the permit was
23 not available to you?

24 A. No.

25 Q. And the rest of the Tonawanda Coke file, that

1 was not available to you because you didn't ask to
2 see it?

3 A. That's correct.

4 Q. Okay. So that's -- what I -- one thing I'm
5 trying to understand is, the decision to issue this
6 letter was based upon a desire to get more
7 information?

8 A. That's correct.

9 Q. Okay. And we know from the testimony of
10 Ms. Hamre that she did not conduct a detailed
11 review of the DEC file.

12 MR. MANGO: Objection, your Honor. I
13 don't think it's proper to tell the witness.

14 MR. PERSONIUS: I can put it a different
15 way. He's right.

16 THE COURT: Okay.

17 BY MR. PERSONIUS:

18 Q. Do you know whether or not Mr. Hamre had
19 reviewed the DEC file?

20 A. Yes, I know.

21 Q. You're aware she did? Do you know how detailed
22 her review was?

23 A. No, I don't.

24 Q. And do you know whether or not Mr. Garing had
25 reviewed the DEC file?

1 A. Mr. Garing did not review the files.

2 Q. Okay. And do you know if either Mr. Ghaffari
3 or Mr. Khan or Mr. Ihlenburg had reviewed the DEC
4 file before this request for information was
5 prepared?

6 A. No, they did not.

7 Q. Okay. And the purpose of the request, as I
8 think you put it, was to get more information?

9 A. That's correct.

10 Q. Okay. And in the information that you were
11 looking for, then, you didn't know whether or not
12 that information already existed in the DEC file?

13 A. That's correct.

14 Q. Okay. And from Mr. Kamholz's perspective --
15 he's the one that answered your request, right?

16 A. Yes.

17 Q. Do you know whether or not he knew that -- do
18 you know whether or not he knew that you, who are
19 preparing this request, had not reviewed the DEC
20 file?

21 MR. MANGO: Objection, your Honor, in
22 terms of -- that's highly speculative in terms of
23 what he knew, what he knew.

24 THE COURT: You don't think he can answer
25 yes or no? We'll permit him to do that.

1 THE WITNESS: No.

2 BY MR. PERSONIUS:

3 Q. Okay. Thank you.

4 Do you remember that Mr. Linsin showed you a
5 letter from March of 1984 by the DEC to Mr. Kamholz
6 regarding what we referred to as quench tower
7 number 1? Do you remember that letter, or do you
8 need to see it again?

9 A. I remember.

10 Q. Okay. And do you remember that letter provided
11 for a DEC exemption for baffles in tower number 1?

12 A. That's correct.

13 Q. Okay. And do you know whether or not that
14 letter was in the DEC file?

15 A. I did not do the file review at DEC, so I had
16 not seen that letter before.

17 Q. There was a letter -- I don't want to make a
18 statement. I'll make it a question.

19 Are you aware of a letter that Mr. Kamholz sent
20 to Gary Foersch at the DEC in December of 1996
21 regarding the other quench tower, quench tower
22 number 2?

23 A. Yes, I was aware of that.

24 Q. You know of that letter?

25 A. Yes.

1 Q. Okay. And when you did this request for
2 information, did you know about that letter?

3 A. No, I did not.

4 Q. So you found out about it after that?

5 A. That's correct.

6 Q. Now, are you aware that there was a response by
7 Mr. Foersch to that letter in January of 1997?

8 A. Yes, I am.

9 Q. You know that now?

10 A. Yes.

11 Q. Okay. But you didn't know that when you
12 prepared the request?

13 A. That's correct.

14 Q. And maybe, more importantly, you didn't know
15 that when you got Mr. Kamholz's response?

16 A. That's correct.

17 Q. All right. Now, I think you've told us also
18 that you did not see the application Mr. Kamholz
19 prepared for the permit before you prepared your
20 request, is that true?

21 A. Yes.

22 Q. And hadn't seen that -- have you ever seen the
23 application by Mr. Kamholz for the Title V permit?

24 A. No, I have not.

25 Q. All right. And so you're not aware of what

1 information Mr. Kamholz put in that application
2 regarding the requirement to have or not have
3 baffles in either of those quench towers, correct?

4 A. Yes.

5 Q. What I say is correct, right?

6 A. Yes, that I had not seen the application.

7 Q. Okay. Thank you very much.

8 And did you, at any time before preparing the
9 request or getting Mr. Kamholz's response, confer
10 with the DEC inspector named Gary Foersch regarding
11 his interaction with Mr. Kamholz at Tonawanda Coke
12 regarding these baffles?

13 A. I don't know that person. I've never met him.

14 Q. All right. Thank you.

15 You've told us that, with respect to the
16 pressure relief valve, you knew from your
17 conversations with one or both of the people from
18 NEIC, that information had been obtained regarding
19 the operation of the PRV after you left Buffalo to
20 go back to New York City.

21 A. That's correct.

22 Q. And you knew about the frequency of the
23 releases?

24 A. Yes.

25 Q. And you knew that it had been indicated that

1 these releases occurred on reversals of the ovens?

2 A. That's correct.

3 Q. And do you remember during his examination
4 Mr. Linsin asked you if you were aware of a
5 decision that had been made by DEC regarding what
6 the pressure setting was going to be on this
7 pressure relief valve as of April or May of 2009?

8 MR. MANGO: Objection, your Honor.

9 THE COURT: Yeah, sustained.

10 MR. PERSONIUS: Are you aware of any
11 conversations that either Ms. Webster or
12 Mr. Sitzman had with Mr. Kamholz after the
13 April 2009 inspection regarding what the pressure
14 setting would be for the PRV?

15 MR. MANGO: Objection.

16 THE COURT: Grounds?

17 MR. MANGO: Calls for speculation, your
18 Honor, and relevance.

19 THE COURT: Not if he knows. Overruled.

20 Do you know?

21 THE WITNESS: No.

22 BY MR. PERSONIUS:

23 Q. Have you, at any time, received information
24 regarding what the PRV, pressure relief valve, at
25 Tonawanda Coke was set at following the April 2009

1 inspection?

2 A. No.

3 Q. From what you know about that pressure relief
4 valve, do you agree that if the set point is
5 higher, it is less likely that the pressure relief
6 valve is going to release?

7 MR. MANGO: Objection, your Honor.

8 THE COURT: Grounds?

9 MR. MANGO: Two grounds. Speculation as
10 to this witness, and relevancy. I don't see the
11 relevancy in this question.

12 THE COURT: Let me ask you, where are you
13 going with this question?

14 MR. PERSONIUS: There is evidence,
15 Judge -- I'm representing to you, there is evidence
16 that will come out later in this trial. Without
17 being more specific, it will tie up the purpose of
18 this question. This is the last question on the
19 subject, but I represent to you, Judge -- and the
20 Government knows it -- there will be evidence that
21 will tie this up.

22 MR. MANGO: Your Honor, that's --

23 THE COURT: Well --

24 MR. MANGO: We're going to object to that.

25 THE COURT: Well, I mean, we've had

1 testimony about the setting of the set point and --
2 by a number of witnesses and what that results in
3 or does not. Are you trying to establish if this
4 witness knows simply that, and then you're moving
5 on?

6 MR. PERSONIUS: That's it, Judge. One
7 question.

8 THE COURT: Go ahead.

9 MR. PERSONIUS: You're going to need the
10 question again, right?

11 THE WITNESS: Yes, please.

12 MR. PERSONIUS: Let me start with this
13 question. Do you have any knowledge what the
14 relationship is between the set point of the
15 pressure on the PRV and how frequently the PRV
16 releases?

17 MR. MANGO: Objection, foundation.

18 THE COURT: No, I'm not -- the foundation
19 is there in terms of the investigation. I'll allow
20 that to stand. Now it's simply a matter of
21 knowledge in terms of the general principal, right?

22 MR. PERSONIUS: Generally how it operates.

23 THE COURT: Go ahead.

24 BY MR. PERSONIUS:

25 Q. Do you need it again?

1 A. Generally speaking, the pressure is -- if the
2 set point is set higher, it will release less
3 frequently.

4 Q. Okay. Thank you.

5 Now with respect to the -- there is a separate
6 device called a flare on the battery. Do you
7 remember you testified about that on direct?

8 A. Yes.

9 Q. And you put some questions about this flare on
10 the battery in your 114 letter.

11 A. That's correct.

12 Q. Okay. Now, when you were preparing those
13 questions, were you aware that in August and
14 September of 2008 the operation of that flare had
15 been a topic of discussion between Tonawanda Coke
16 and the Department of Environmental Conservation?

17 A. Yes, I recall that we had some discussion of
18 that flare during our inspection in April.

19 Q. Okay. And you had a discussion about that with
20 Mr. Sitzman?

21 A. No, with Mr. Kamholz.

22 Q. Oh, with Mr. Kamholz. Okay. Did you talk --
23 we'll get to that in a minute.

24 Did you talk to Mr. Sitzman or Ms. Webster
25 about the operation of that battery flare and what

1 had been addressed in August and September of 2009?

2 A. I don't recall having any discussions with
3 them.

4 Q. All right. Were you aware that the DEC had
5 issued a notice of violation to Tonawanda Coke in
6 October of 2008 related to that flare on the
7 battery?

8 A. I don't know.

9 Q. Are you aware that there had been -- you've
10 referred to these full compliance -- I think it's
11 called a full compliance evaluation. Do you know
12 what that means?

13 A. That's correct.

14 Q. That's kind of a ratcheted up inspection,
15 right, it's a more detailed inspection?

16 A. Yes, more comprehensive.

17 Q. That's a better way to put it.

18 That there had been a full compliance
19 evaluation in Tonawanda Coke in August --
20 August 21st of 2008 and that one of the topics
21 addressed was the operation or non-operation of
22 this flare. Did you know that?

23 A. No, I did not.

24 Q. All right. So all the information you had when
25 you prepared your request for information was a

1 conversation you had with Mr. Kamholz during the
2 inspection?

3 A. That's correct. It was based on our -- the
4 information we gathered during the inspection and
5 my follow-up conversations with the NEIC
6 inspectors.

7 Q. All right. Do you remember what Mr. Kamholz
8 told you about that flare on the battery during the
9 inspection?

10 A. It's in my notes. He did mention that they had
11 some operational problems with the pilot light and
12 with the thermocouple previously and that they had
13 addressed those issues in the past.

14 Q. All right. Thank you. Let's see. We'll go to
15 the screen now to Government Exhibit 126, which
16 starts with a letter.

17 Lauren, would you please go to page 2? Thank
18 you. Lauren, would you please make that circled
19 paragraph bigger?

20 I made one of the circled paragraphs on the
21 second page of the form letter bigger. Do you see
22 that on the screen?

23 A. Yes.

24 Q. Okay. Do you see in bold that what your letter
25 indicated is that you wanted a response within 30

1 days of receipt of your request?

2 A. That's correct.

3 Q. And is it true that you got your response
4 within those 30 days?

5 A. Yes, we did.

6 Q. No request for an extension?

7 A. That's correct.

8 Q. And when you got the response, you got -- how
9 many boxes of records was there?

10 A. It was about two boxes.

11 Q. Two boxes, okay.

12 You can take that down, Lauren. I'd like
13 exhibit -- back up, please, Government Exhibit 126.
14 And could we go to page 8, please?

15 Now, let's try this. Do you have page 8 in
16 front of you, Mr. Patel?

17 A. Okay.

18 Q. You see that?

19 A. Yes.

20 Q. It says "Enclosure 1" up at the top?

21 A. Yes.

22 Q. Could we make that part bigger, Lauren, please?
23 Can you see that now?

24 A. Yes.

25 Q. Easier to read?

1 A. Yes.

2 Q. Okay. Do you see where I put a blue arrow? Do
3 you see a blue arrow on the screen?

4 A. Yes.

5 Q. And there is a bullet point next to that.

6 A. Is that the third one you're pointing at?

7 Q. Yes, the third bullet.

8 A. Yes.

9 Q. And that indicates -- these are form
10 instructions that go with the request for
11 information?

12 A. That's correct.

13 Q. All right. And it tells the person responding
14 to provide responses to the best of your ability,
15 even if the information sought was never documented
16 in writing or if the written documents are no
17 longer available, correct?

18 A. Yes.

19 Q. So EPA recognizes when it makes these requests
20 that the person responding may either no longer
21 have the requested documents or the documents may
22 have never existed, correct?

23 A. Yes.

24 Q. And what the person responding is told to do in
25 that case is do your best?

1 A. Yes.

2 Q. All right. Now, the -- I put another blue
3 arrow, and that's for the last bullet. Do you see
4 that?

5 A. Yes.

6 Q. And that says, "For all time periods specified
7 below" -- and then it says, "for example, quote,
8 for the past five years, unquote, the period
9 extends back from the date of receipt of this
10 information request."

11 A. That's correct.

12 Q. Right? And that is telling the person who's
13 responding if we want you to be referring to
14 anything other than the points in time when you
15 provide the response, we'll let you know.

16 A. I did not understand.

17 Q. Okay. What this part of the instructions is
18 saying is that if you want the information to cover
19 a time period other than the present, in other
20 words, what the situation is when you provide the
21 response, the request for information will let the
22 responding party know that.

23 A. I'm sorry, I just don't understand where you're
24 going.

25 Q. Let me put it a different way. When you

1 prepared your request for information you were
2 looking for the status of Tonawanda Coke's
3 operation as of date Mr. Kamholz responded, right?

4 A. And going back five years.

5 Q. Did you tell him in your request that they went
6 back five years?

7 A. Yes, it does say that in the other portions of
8 the 114.

9 Q. Okay. We'll get to it.

10 A. Okay.

11 Q. But you're saying -- you're telling the jury
12 that your intention when you made the request was
13 to cover a period of five years before the request
14 was provided?

15 A. Typically what we -- we are limited by law
16 to -- for a five-year period. That's basically as
17 far as back we can go. So this is boilerplate
18 language. And then in the rest of the letter it
19 will tell you starting from today going back five
20 years or this period.

21 Q. Okay. When we get to the request, we'll see
22 where you did that and where you didn't do that.

23 Nothing prevented you from including that
24 language in the request, correct?

25 A. That's correct.

1 Q. All right. Can we go, Lauren, please, to --
2 I'd like to get to the first page of the actual
3 request. Could you go to the next page, please,
4 Lauren? And then the next one, please. Okay. Go
5 back to the one before that, please. Okay.

6 We're on page -- of this exhibit -- Government
7 Exhibit 126, page 9. Do you see that in the lower
8 right?

9 A. Yes.

10 Q. Okay. And is this where you started your
11 specific request that you and Mr. Khan and
12 Mr. Ghaffari and Mr. Ihlenburg put together?

13 A. That's correct.

14 Q. All right. And what it says at the top is
15 simply a heading that says "General Facility
16 Information," right?

17 A. Yes.

18 Q. And then there's certain numbered questions
19 that come after that?

20 A. Yes.

21 Q. True?

22 Could we go to the next, page, please, Lauren.

23 Now, on page 10, it's at question number 8 that
24 you make some inquiries regarding the quench
25 towers, right?

1 A. Yes.

2 Q. Okay. Could you make that bigger, Lauren?

3 We've made bigger from your request items
4 number 8 and number 9, is that right?

5 A. Yes.

6 Q. Okay. The first question is, "For the quench
7 towers at the facility, state whether the quench
8 towers have any baffles."

9 A. Yes.

10 Q. Right?

11 Now, is it your testimony that you were asking
12 for whether or not the facility had baffles for the
13 past five years, or are you asking if the facility
14 had baffles on the day that Mr. Kamholz provides
15 his response?

16 A. It would be if the quench tower had baffles for
17 the past five years or even longer.

18 Q. Okay. Good. Tell us where in your question
19 you make it clear to Mr. Kamholz that you're
20 looking for information for the past five years.

21 A. For that portion of the question?

22 Q. We're starting with that one.

23 A. Well, the general instructions said go back
24 five years.

25 Q. It did, okay. Let's go back. We'll go back.

1 Would you go back to the general instructions,

2 Lauren. And I think that's on page 8.

3 Is this what you're talking about?

4 A. Yes.

5 Q. And where does that tell you to go back five
6 years?

7 A. Okay. I see your point.

8 Q. You agree that it wasn't clear -- it's not
9 clear to the person reading this who is responding
10 that you expect to get information covering five
11 years prior to the response, right?

12 A. That's correct.

13 Q. All right. So, if we go back to page 10,
14 please, Lauren, and back to the -- thank you,
15 Lauren.

16 We've made those two questions about the
17 baffles bigger again, correct?

18 A. Yes.

19 Q. All right. And here's a great example. In
20 question 9 you make it clear that you want records
21 going back five years, right?

22 A. Because records -- there was a time limit for
23 how long you keep records.

24 Q. I understand.

25 A. There is no time limit for how long the

1 controls have to be installed from the time you
2 start operating that piece of equipment till
3 whenever you remove that piece of equipment.

4 Q. I understand. But my point is, in question 9
5 you specifically refer to the fact you want to get
6 records going back five years, right?

7 A. That's correct.

8 Q. All right. And you got records going back five
9 years on the past from Mr. Kamholz, right?

10 A. The response from the company said they had no
11 records of maintenance on the baffles.

12 Q. Okay. So you got nothing and that was okay
13 too. If they had no records, they didn't have to
14 provide them, right?

15 A. That's correct.

16 Q. But on -- we can agree on the answers to
17 question 8, that what you -- what Mr. Kamholz could
18 have understood and probably should have understood
19 is you were looking for the information on the date
20 he prepared his response, right?

21 MR. MANGO: Objection, your Honor.

22 THE COURT: Yeah, sustained.

23 BY MR. PERSONIUS:

24 Q. Put it a different way, question 8 doesn't
25 indicate you want the condition going back five

1 years, right?

2 A. That's true.

3 Q. All right. And I think maybe what we should
4 do, if we can, Lauren, please, is go to Government
5 Exhibit 127.

6 And this is Mr. Kamholz's response, right?

7 A. Yes.

8 Q. And if we get past the issue of the date, which
9 was created by Mr. Kamholz -- but it is his
10 response, we agree, right?

11 A. Yes.

12 Q. Whatever the date was. And can we go to page 4
13 of Government Exhibit 127? Could you make that
14 bigger, please, Lauren?

15 This is what Mr. Kamholz responded on the
16 baffles, right?

17 A. Yes.

18 Q. Okay. And he said the quench towers are not
19 baffled?

20 A. That's correct.

21 Q. And as far as you know, that was true?

22 A. We learned that afterwards.

23 Q. Okay. But as you sit here now, do you have any
24 question as to the accuracy of that response?

25 A. No.

1 Q. All right. And he goes on to describe that
2 they're not traditional quench towers, right?

3 A. That's correct.

4 Q. And then he provides an explanation about what
5 the height is and talks about it reducing the
6 upward velocity of the quench, right?

7 A. That's correct.

8 Q. When you read that, did you know what he was --
9 what his purpose was for putting that information
10 in?

11 A. Yes, I did.

12 Q. And what was his -- what was your understanding
13 of his purpose in putting that information in?

14 A. What I understood from the response, he was
15 trying to explain that this is a wider quench tower
16 than would normally be at a coke oven.

17 Q. Right. And because it was wider, and because
18 it was shorter, that that would affect how -- how
19 many of these -- what would happen with these
20 particulates when they would come off the coke when
21 it was quenched, right?

22 A. I don't know, sir.

23 Q. All right. Did you not understand his
24 response?

25 A. I understood the response. However, the

1 regulation does not have that distinction about
2 wide quench towers or tall quench towers.
3 Basically the New York State regulation states all
4 quench towers shall have baffles.

5 Q. Which regulation says that?

6 A. The New York State Rule 214.

7 Q. Okay. What section?

8 A. I believe it's 214.6.

9 Q. 214.5(a). Are you familiar with 214.10?

10 MR. MANGO: Objection, your Honor. He
11 tried to answer the question the best he can. Now
12 this is getting a little argumentative.

13 THE COURT: It does relate to his
14 knowledge. I'll allow the question to continue.

15 MR. PERSONIUS: Thank you, Judge.

16 BY MR. PERSONIUS:

17 Q. Are you acquainted, sir, with 6 NYCRR 214.10?

18 A. Yes.

19 Q. And what does that provide for?

20 A. Provides for an alternate plan, I believe.

21 Q. Which could be not having baffles, right?

22 MR. MANGO: Objection, your Honor.

23 THE COURT: Grounds?

24 MR. MANGO: Speculation.

25 THE COURT: Not necessarily.

1 You may answer, if you know.

2 THE WITNESS: I don't know exactly what
3 the grounds would be in 214.10 to ask for anything
4 related to quench towers.

5 BY MR. PERSONIUS:

6 Q. I see. You know that back in 1984 the DEC
7 granted an exemption to Tonawanda Coke to have
8 baffles in quench tower number 1, right?

9 A. Now I do, yes.

10 Q. Do you know what the basis for that was?

11 A. No, I did not.

12 Q. I think you told us earlier, though, that every
13 quench tower has to have baffles, right?

14 A. That's correct.

15 Q. And do you agree that because of 6 NYCRR
16 214.10, that that may not be true?

17 A. I don't know.

18 Q. Okay. Can we go back to Government Exhibit
19 126, Lauren?

20 This is your request, right?

21 A. Yes.

22 Q. And go to page 12, please, Lauren. Could you
23 make the bottom half bigger, please? Thank you.

24 This is question 20 which relates to the
25 pressure relief valve?

1 A. Yes.

2 Q. Okay. What shows on this page, and I think it
3 continues on the next page, are the requests you
4 set out under paragraph 20 related to the pressure
5 relief valve, right?

6 A. That's correct.

7 Q. And I want you to -- just so you're satisfied
8 with the language that's on this page, and then
9 we're going to go to the next page. But I want you
10 to look at it and let us know if there's anything
11 in this request that indicates that you wanted
12 information going back five years. Take a look at
13 what's here and we'll show you the rest of the
14 request.

15 A. Okay.

16 Q. Have you seen enough of this?

17 A. Yes.

18 Q. Can we see the next page, please, Lauren? Just
19 that part, please, Lauren.

20 Okay. And without seeing the rest of it, it's
21 a little confusing, but it does talk here about
22 five years, right?

23 A. That's correct.

24 Q. But it's relating to reports, correct?

25 A. That's correct.

1 Q. So as far as the -- let's go back to the
2 previous page, please, Lauren. And the bottom
3 half, please, make bigger.

4 As far as request A through E, the non-record
5 request, there's nothing to indicate you were
6 looking for information going back five years,
7 correct?

8 A. D does.

9 Q. It does, okay. Tell us which one does.

10 A. D.

11 Q. Okay. It's another records request?

12 A. That's correct.

13 Q. Okay. You're right about that. If we go like
14 this, A, B, C, and E are not looking for
15 information going back five years.

16 A. That's correct.

17 Q. Okay. And can we now go back to Government
18 Exhibit 127, Lauren, and go to page, please, 6?

19 Go to page 6 of Government Exhibit 127,
20 Mr. Patel?

21 A. Yes.

22 Q. Lauren, could you make that bottom part bigger?

23 This is where Mr. Kamholz began his response
24 about the PRV, right?

25 A. That's correct.

1 Q. And he -- the first question had to do with
2 what the purpose of the PRV was, and he answered
3 that, right?

4 A. That's right.

5 Q. The second question had do with how long it had
6 been there?

7 A. Yes, sir.

8 Q. He gave you an estimate?

9 A. That's correct.

10 Q. Could we go to the next, page, please, Lauren?
11 Could you make the upper part bigger, please,
12 Lauren?

13 And then C had asked if there's written
14 operating instructions. He said there were not,
15 right?

16 A. Yes.

17 Q. It asked what the objective was. He answered
18 that, right?

19 A. Yes.

20 Q. Okay. And then D was asking for some records,
21 and he indicated there were these circular charts
22 going back 30 days, right?

23 A. Yes. We asked for five years. The response is
24 he only had 30 days.

25 Q. He gave you -- what he had he gave you?

1 A. That's correct.

2 Q. And you got those charts?

3 A. Yes, sir.

4 Q. And they were for the -- the month of September
5 of 2009?

6 A. I don't remember what the date was on them.

7 Q. Believe me, that's understandable. It says
8 here they were included as attachment 20D, right?

9 A. That's correct.

10 Q. And then we get to E. And E asked about how
11 often this releases and so on, right?

12 A. Yes.

13 Q. And I think we've agreed that when you made
14 your request, that what you were looking for is
15 what the operations of the PRV was in October --
16 September or October of 2009, right?

17 A. That's the reading of the --

18 Q. It's a fair reading of your request?

19 A. Yes.

20 Q. And what he says is, the PRV opens very rarely,
21 right?

22 A. Yes, that's what the response is.

23 Q. And do you know what the operation of the PRV
24 at Tonawanda Coke was in September, October
25 of 2009?

1 A. No.

2 Q. You got information about what it was back in
3 April of 2009, right?

4 A. Yes.

5 Q. All right. Now, it goes on to say in this
6 response that the objective is to conserve COG,
7 which is coke oven gas, right?

8 A. Yes.

9 Q. And for the boiler and the battery?

10 A. Yes.

11 Q. And then it says, if the valve opens it would
12 be only for five or ten seconds, right?

13 A. Yes.

14 Q. And, again, the information you'd received back
15 from what was known in September -- or April of '09
16 was that when the PRV opened, it was for a short
17 period of time?

18 A. A short period of time, every half hour.

19 Q. Right. Back then?

20 A. That's correct.

21 Q. And then it says in the open position, it gives
22 an estimate about what it would emit coke oven gas
23 at a certain rate.

24 A. Yes.

25 Q. You told us you did a calculation based on

1 that, but you were basing that on information back
2 in -- related back to April of 2009?

3 A. That's correct.

4 Q. All right. And then in F he provided a
5 response about the emissions. And what he says in
6 F is that the emissions have not been reported
7 because they are believed to be de minimus, right?

8 A. That's what the response is.

9 Q. Okay. And we can agree, again, that it would
10 have been fair for Mr. Kamholz to be basing that
11 response on what the emissions were in September
12 and October of 2009, correct?

13 MR. MANGO: Objection, your Honor. F
14 actually says five years, so we shouldn't be
15 putting words into this witness's mouth. F says
16 calculate the emissions -- I'll just withdraw. I
17 think I can make my point on redirect, your Honor.
18 I'm sorry.

19 MR. PERSONIUS: Let's go back --

20 THE COURT: Did you have a misstatement
21 there?

22 MR. MANGO: No, I object on -- I object to
23 that question.

24 THE COURT: On the grounds that the
25 question called for a five-year period of time?

1 MR. MANGO: Yes, your Honor.

2 THE COURT: All right. Sustained.

3 MR. PERSONIUS: All right.

4 BY MR. PERSONIUS:

5 Q. Can we go back, Lauren, please, to Government
6 Exhibit 126? Then go to -- I think it's page 12
7 Lauren, please. Thank you.

8 And this is going to be a little tough because
9 it goes on to the next page. We're on page 12.
10 This is the first part of the question. It says,
11 "State whether any coke oven gas emissions from the
12 PRV are reported to the EPA or NYS DEC as
13 deviations from TCC's Title V permit requirements.
14 If your answer is yes, provide copies of all
15 such" -- and then we went to the next page. Thank
16 you, Lauren -- "reports for the past five years.
17 If your answer is no, explain why such emissions
18 are not reported." Right?

19 A. Yes.

20 Q. That's what the question says?

21 A. That's what the question is.

22 Q. And you can -- maybe now we should go back to
23 the response, if we could, and that's Government
24 Exhibit 127. And go to page 6 for starters,
25 Lauren. And go to seven, please. And highlight

1 that, please.

2 And it says, "COG emissions have not been
3 estimated nor have they been reported as deviations
4 from TCC's Title V permit. The emissions have not
5 been reported because they are believed to be de
6 minimus." Right?

7 A. That's what the response says.

8 Q. Okay. And, again, my -- I'll ask the question
9 again. As that question was written, do you agree
10 it was fair for Mr. Kamholz to interpret that to be
11 asking the question as to what the emissions were
12 when he prepared the response?

13 MR. MANGO: Objection, your Honor, as to
14 what was fair for Mr. Kamholz.

15 MR. PERSONIUS: I can state it a different
16 way.

17 Do you agree -- given the entire format of your
18 request, do you agree it would have been reasonable
19 for Mr. Kamholz to interpret this question to be
20 looking for a response as conditions existed in
21 September and October of 2009?

22 MR. MANGO: Objection, your Honor.

23 THE COURT: No, I'll permit it.

24 Overruled.

25 THE WITNESS: No, I don't.

1 BY MR. PERSONIUS:

2 Q. You don't think that would be reasonable?

3 A. That's correct.

4 Q. And the reason you say that is because there's
5 that reference to records for five years?

6 A. That's correct.

7 Q. And you aren't open to the fact that, given how
8 all the other questions are written, that
9 Mr. Kamholz would have understood that he was to
10 provide a response as those conditions existed in
11 September and October of 2009?

12 MR. MANGO: Objection, your Honor. I
13 think he's bound by the earlier answer.

14 THE COURT: Yeah. And let's move on,
15 please. Sustained.

16 MR. PERSONIUS: Okay.

17 BY MR. PERSONIUS:

18 Q. Now, let's just spend a minute, if we can, on
19 the request related to the -- to the flare.

20 Would you go back to Government Exhibit 126,
21 Lauren?

22 This would be your request?

23 A. Yes, sir.

24 Q. And go to page 15, Lauren. I think that part,
25 Lauren, please.

1 We made question number 32 larger?

2 A. Yes.

3 Q. Okay. And this relates to the flare on the
4 battery?

5 A. That's correct.

6 Q. Okay. And the request here had to do with the
7 pilot light on that flare?

8 A. That's correct.

9 Q. And can we agree that this is a little
10 difficult because 32A is asking for the date it was
11 installed, so you have to go back in time to
12 provide that information, right?

13 A. Yes.

14 Q. For 32B, how it's monitored, you agree it would
15 be reasonable for Mr. Kamholz to interpret that to
16 have been as of September and October of 2009?

17 A. It could be interpreted that way.

18 Q. Okay. And C and D asks for records, correct?

19 A. That's correct.

20 Q. All right. And would you go to Government
21 Exhibit 127, please, Lauren? And go to page 10,
22 please. And I'm sorry, you've got to go back to
23 page 9.

24 Mr. Kamholz's response starts at the bottom of
25 page 9, right?

1 A. That's right.

2 Q. And the request for when it was installed, he
3 provided that information?

4 A. Yes.

5 Q. Okay. Can we go to the next page, please,
6 Lauren.

7 And then as to question B, he provided a
8 response on how that operated --

9 A. Yes, sir.

10 Q. -- right?

11 And as to question C, he says the documents
12 regarding when it was and wasn't in service don't
13 exist, right?

14 A. Yes.

15 Q. Okay. And for question D he says look to the
16 response to C, which you would understand to mean
17 he doesn't have documents.

18 A. That's correct.

19 Q. Is that fair?

20 A. Yes.

21 Q. And could we go back to Government Exhibit 127,
22 please?

23 This was the first page of Mr. Kamholz's
24 response, correct?

25 A. Yes.

1 Q. Okay. And would you make that part bigger,
2 please, Lauren?

3 He included an expressed invitation to call him
4 if there were any questions, right?

5 A. Yes.

6 Q. And do you know if anybody contacted him with
7 questions?

8 A. I understand we were instructed not to contact
9 him at that point. When we got the response to the
10 114 response, we were told not to contact the
11 company directly.

12 Q. Okay. Who told you not to contact them?

13 A. I believe it was word from counsel.

14 Q. Okay. All right. Mr. Ihlenburg?

15 A. It wasn't him. It was other counsel. I just
16 don't remember which counsel at EPA.

17 Q. Okay. All right.

18 MR. PERSONIUS: Could I have a minute
19 please, Judge?

20 THE COURT: Yes.

21 MR. PERSONIUS: Your Honor, I have no
22 further questions.

23 Thank you, Mr. Patel.

24 THE WITNESS: Thank you.

25 THE COURT: Mr. Mango, yes.

1 How is our jury doing, ladies and gentlemen?

2 Pretty good for a Friday afternoon? All right.

3 Good.

4 MR. MANGO: Thank you, your Honor. May I
5 proceed?

6 THE COURT: Certainly.

7 REDIRECT EXAMINATION BY MR. MANGO:

8 Q. Good afternoon, Mr. Patel.

9 A. Good afternoon.

10 Q. If we could pull up Government Exhibit 50 in
11 evidence, your Honor.

12 THE COURT: 5-0?

13 MR. MANGO: 5-0.

14 BY MR. MANGO:

15 Q. Mr. Patel, you were asked about your inspection
16 that you conducted. Do you recognize this
17 photograph on your screen?

18 A. Yes, I do.

19 Q. How do you recognize this?

20 A. This was a photo that I took during the
21 inspection while we were on the top of the coke
22 oven battery.

23 Q. Okay. At the time you took this photograph,
24 did you intend to capture the bleeder in the
25 photograph?

1 A. No, I did not.

2 Q. Okay. All right.

3 Thank you. We can take that down, Lauren.

4 I'd like to -- first off, prior to issuing your
5 114 letter, is there any requirement that EPA has
6 to scour all available information that's already
7 out there before you issue your 114 letter?

8 A. No, there is not.

9 Q. Okay. If we could actually try a split screen
10 here, your Honor. Pull up 126 on the left, and 127
11 on the right. This may speed up my --

12 THE COURT: You're getting pretty fancy,
13 Mr. Mango.

14 MR. MANGO: -- my redirect here. Thank
15 you.

16 On 126, if we could go to page 12 of 126, focus
17 in on this section. On 127, if we could go to
18 page 7, please, Lauren. If we could focus in on
19 this section.

20 BY MR. MANGO:

21 Q. Mr. Patel, you see that on your screen?

22 A. Yes, I do.

23 Q. Okay. For D here, on 126, Exhibit 126, see
24 where 20 --

25 A. 20D.

1 Q. Yes, 20D.

2 That talks about operating parameters and a
3 copy of all monitoring records for the past five
4 years, is that right?

5 A. Yes.

6 Q. Okay. And 20D, in the response on Exhibit 127
7 is there any reference there to a by-products log
8 book?

9 A. No, there is not.

10 Q. Okay. So is it fair to say in 20D you're
11 asking for how this valve operated for the past
12 five years?

13 A. How the pressure relief valve operated, that's
14 correct.

15 Q. Okay. So if, for example, this pressure relief
16 valve was typically set to release at 80 to 100
17 centimeters of oil, but then was changed to a
18 higher setting, do you think you would want to know
19 that by asking that question in terms of how the
20 valve operated over the course of five years?

21 MR. LINSIN: Your Honor --

22 THE COURT: The question was kind of
23 simple until you added two other parts to it.

24 To the form of the question, sustained.

25 MR. LINSIN: Thank you.

1 BY MR. MANGO:

2 Q. In your attachments that you received in the
3 response to 127, Exhibit 127, did you receive any
4 type of by-products log books that showed where the
5 bleeder had been set at for the past five years?

6 A. No, we did not.

7 Q. All right. Now, for question F on 126, your --
8 is the purpose of your question here to request an
9 emission --

10 MR. PERSONIUS: Your Honor, I object to
11 the leading. I'm sorry to interrupt. You can tell
12 from "Was it your purpose."

13 THE COURT: You kind of scared me there
14 for a second, Mr. Personius. I didn't see that one
15 coming. What's the objection? Leading?

16 MR. PERSONIUS: Leading.

17 THE COURT: Kind of rearticulate that.

18 MR. PERSONIUS: I apologize for
19 interrupting.

20 MR. MANGO: Yeah.

21 BY MR. MANGO:

22 Q. If -- Lauren, on page -- on Exhibit 126 on the
23 left, if we can actually go to page 13.

24 Okay. Mr. Patel, you see that? That's the
25 last part of your question 20F that goes on to the

1 next page in Exhibit 126 --

2 A. Yes.

3 Q. -- is that right?

4 Okay. And what -- can you tell the jury what
5 the purpose of this question was and what you were
6 looking for in response?

7 A. We were looking for emission estimates for the
8 past five years, if there were any reports that
9 were made to the New York State Department of
10 Environmental Conservation for the past five years
11 and what those emission numbers would have been
12 reported as exceedances to the state.

13 Q. Okay. And in Exhibit 127F, are you provided
14 with any type of emission information for the past
15 five years?

16 A. No, we are not.

17 Q. Lauren, if we can go on Exhibit 126 on the
18 left, to page 15, please. Focus in on -- well,
19 before we focus in on the right, Exhibit 127, if we
20 can go to page 10, please.

21 Okay. Mr. Patel, do you remember being asked
22 on cross-examination about your question 32 there,
23 and the response to 32, which is up there regarding
24 the pilot light?

25 A. Yes.

1 Q. Okay. I want to focus on question 33, which
2 also focuses on the pilot light. Okay. Is it
3 accurate to say that 33 says "Provide detailed
4 information and documentation regarding all periods
5 during the last five years in which the facility's
6 bypass bleeder flare was not operating with a pilot
7 flame present", is that right?

8 A. That's right.

9 Q. You know what, Lauren, if we can -- I'll
10 just -- in 33 here, so you asked for detailed
11 information and documentation, right?

12 A. Yes.

13 Q. And Exhibit 127 Mr. Kamholz says,
14 "documentation as to when the pilot light is not
15 available", is that right?

16 A. That's what the response said.

17 Q. But you asked for information as well, right?

18 A. We asked for information.

19 Q. Is there any information in there?

20 A. There is not.

21 Q. Were you aware in preparing your 114
22 questionnaire that TCC had no pilot light on the
23 battery flare stack from '94 to 2008?

24 A. I don't remember.

25 Q. Were you aware in preparing the questionnaire

1 that TCC removed and never replaced the baffles in
2 the east quench tower, number 2?

3 A. No, I was not.

4 THE COURT: Sorry. What was your answer?

5 THE WITNESS: No.

6 THE COURT: Thank you.

7 BY MR. MANGO:

8 Q. Were you aware in preparing the questionnaire
9 that in 1997, even though DEC had, in a letter,
10 told TCC that baffles were required in the tower,
11 that they never put baffles in the tower?

12 A. No, I was not.

13 MR. MANGO: Thank you, your Honor.
14 Nothing Further.

15 THE COURT: Okay, Mr. Mango. Thank you.

16 Any recross, Mr. Linsin?

17 MR. LINSIN: Yes, briefly. Thank you,
18 your Honor.

19 RECROSS EXAMINATION BY MR. LINSIN:

20 Q. You were asked on redirect, sir, whether there
21 is any requirement that EPA -- I believe the words
22 were -- scour all available sources for information
23 before it issues a 114 request for information.

24 Do you recall that question?

25 A. Yes.

1 Q. And your answer was no, there's no such
2 requirement, correct?

3 A. That's correct.

4 Q. Now, there's one Clean Air Act, right?

5 A. Yes.

6 Q. It's a federal statute, right?

7 A. Yes.

8 Q. And the states are authorized to implement that
9 federal statute, correct?

10 A. That's correct.

11 Q. And they're delegated the authority to conduct
12 inspections, correct?

13 A. Yes.

14 Q. Determine whether there are violations,
15 correct?

16 A. Yes.

17 Q. States issue their own regulations to enforce
18 the Clean Air Act requirements, correct?

19 A. Yes.

20 Q. And EPA and the state agencies, they're
21 delegated the authority to implement this federal
22 law, coordinate on a regular basis, don't they?

23 A. Yes.

24 Q. And it's reasonable, isn't it, for a regulated
25 facility to presume that the federal and state

1 regulators are going to coordinate and communicate
2 when they talk about enforcing the same statute,
3 isn't it?

4 MR. MANGO: Objection, your Honor.

5 THE COURT: Overruled.

6 BY MR. LINSIN:

7 Q. Isn't that reasonable, sir?

8 A. You're going to have to repeat your question,
9 sir.

10 Q. Isn't it reasonable for a regulated facility to
11 presume that the federal and state agencies that
12 are charged with enforcing the same statute are
13 going to coordinate and communicate about that
14 process of enforcement? Isn't that reasonable?

15 A. It's reasonable.

16 Q. Now, may I please have Government's Exhibit 127
17 back up? And I don't have a precise page
18 reference, but it is the response to question 20.
19 Can we go -- is there any way to capture -- let's
20 go to the next page, please, and open the top half,
21 please.

22 Now, this is Tonawanda Coke's response to your
23 request for information, correct?

24 A. Yes.

25 Q. And you received this response -- I know

1 there's a little confusion on the date, but -- in
2 the precise date, but in October of 2009. Is that
3 reasonable?

4 A. That's reasonable.

5 Q. All right. Now, when you received this
6 response in October of 2009, did you review the
7 note here that is provided for response 20?

8 And could you highlight that note, please,
9 Lauren?

10 MR. MANGO: Objection, your Honor. This
11 goes beyond the scope of my redirect, to now have
12 recross on this issue.

13 THE COURT: No, it opened the door. I'm
14 going to allow it for cross-examination or recross.

15 BY MR. LINSIN:

16 Q. Can we highlight the notes? That's it.

17 Did you read that note?

18 A. Yes, I did.

19 Q. And so you understood that as of October of
20 2009 the company was planning to deactivate this
21 pressure relief valve in the by-products area,
22 correct?

23 A. That's correct.

24 Q. And I believe you testified earlier that you
25 actually -- or EPA issued an NOV, a notice of

1 violation, regarding this pressure relief valve in
2 April of 2010, is that correct?

3 MR. MANGO: Objection, your Honor, as
4 well, goes beyond the scope of redirect.

5 THE COURT: We're going to wrap it up.
6 I'll permit it.

7 BY MR. LINSIN:

8 Q. April 2010?

9 A. Yes, we did.

10 Q. Before you decided to issue a notice of
11 violation concerning this pressure relief valve,
12 did you call Tonawanda or Mark Kamholz and ask them
13 whether or not this pressure relief valve had been
14 deactivated?

15 MR. MANGO: Objection, your Honor.
16 Relevance.

17 MR. LINSIN: I'm sorry, I didn't hear your
18 response.

19 THE COURT: The objection was relevance.
20 I haven't ruled on it yet.

21 MR. LINSIN: I apologize, your Honor.

22 THE COURT: The relevance here is?

23 MR. LINSIN: The relevance here, your
24 Honor, is these are responses -- the integrity of
25 these responses has been challenged by the

1 government. Understanding what these responses
2 intended to communicate and exploring how this
3 witness interpreted those responses is relevant to
4 understanding whether the responses are reasonable.

5 THE COURT: But there's no obligation to
6 go beyond the response, right? So it's not
7 relevant that the witness made calls or not in
8 connection with a completed response document.

9 MR. LINSIN: Well, part of the response
10 we're talking about here, your Honor, and the
11 question went to was the agency's response six
12 months later to issue a notice of violation.
13 That -- and this was a subject of the witness's
14 earlier testimony. I believe I have two questions
15 on the issue.

16 MR. MANGO: Which, your Honor, relates
17 to -- the April notice of violation in 2010 relates
18 to information determined in April of '09. So the
19 relevance to this note has no bearing on this --
20 this NOV, which isn't even in evidence at this
21 point. It's -- we're beyond relevant here.

22 MR. LINSIN: Your Honor, the witness
23 testified about that notice of violation in
24 response to questions from counsel from the
25 government.

1 MR. MANGO: Your Honor, and it says that
2 the notice of violation is limited in a period of
3 time to 2009. The fact that it was issued in 2010
4 is not relevant because the notice of violation is
5 addressing something from 2009.

6 THE COURT: But something happened
7 in 2010. I'm going to permit it over objection.

8 MR. LINSIN: Thank you, your Honor.

9 BY MR. LINSIN:

10 Q. Shall I repeat the question, sir?

11 A. Yes, please.

12 Q. Lets see if I can do that.

13 My question -- I think I just have two
14 questions. Before EPA issued its notice of
15 violation regarding this pressure relief valve in
16 April of 2010, did you contact Tonawanda Coke or
17 Mr. Kamholz to even determine whether this pressure
18 relief valve was still operating?

19 A. No, we did not.

20 Q. When you issued the notice of violation in
21 April of 2010 regarding this pressure relief valve,
22 did you know that the pressure relief valve in the
23 by-products area of Tonawanda Coke had already been
24 deactivated?

25 MR. MANGO: Objection, your Honor.

1 MR. LINSIN: I withdraw.

2 THE WITNESS: Yes, we did. We, meaning
3 EPA, did.

4 MR. LINSIN: And so even though you knew
5 it was deactivated, you decided to issue a notice
6 of violation?

7 THE WITNESS: Yes, for the past operation
8 of the pressure release valve.

9 MR. LINSIN: All right. No further
10 questions. Thank you, your Honor.

11 THE COURT: Thank you.

12 Mr. Personius, any recross?

13 MR. PERSONIUS: I do not, your Honor.

14 MR. MANGO: Your Honor, I have one
15 question that I think will clear something up.

16 THE COURT: Okay. Fair enough.

17 MR. MANGO: Thank you.

18 REDIRECT EXAMINATION BY MR. MANGO:

19 Q. Mr. Patel, were you informed to not contact the
20 corporation because the criminal process had
21 already started --

22 A. That's correct.

23 Q. -- at the time you wanted your information?

24 A. That's correct.

25 MR. MANGO: All right. Thank you.

1 Nothing else, your Honor.

2 THE COURT: Okay. We're going to stare
3 each other down here, Mr. Patel. You're not trying
4 to tell me you want to leave that witness stand,
5 are you?

6 You can step down. You're excused. Thank you.
7 Have a good weekend.

8 THE WITNESS: Thank you.

9 THE COURT: Okay. We either need to take
10 a break or recess for the weekend.

11 MR. MANGO: We are ready with a witness,
12 your Honor. We defer to the Court.

13 THE COURT: Long?

14 MR. PIAGGIONE: Yes, he will be long.

15 THE COURT: Okay. How would you like to
16 take a 15-minute break. In that period of time,
17 head home. All right? Would that be fair? All
18 right. I know, Ms. Lambert, you don't want to
19 leave.

20 A JUROR: Yes, I do.

21 THE COURT: All right. We'll see you
22 when?

23 THE JURY: Monday.

24 THE COURT: What time?

25 THE JURY: 9:30.

1 THE COURT: Remember, this is important to
2 both sides. Don't do anything with respect to the
3 media. Don't do any investigation. Don't discuss
4 the case. Keep your minds open. We're making
5 progress, as you can see. There's a lot there, you
6 know that. It will become focused in terms of what
7 those fact issues are that you have to resolve.
8 It's been terrific. I know it's tedious and you're
9 tired of listening to me. I'm going to send you
10 home. Be safe and come back Monday happy and
11 healthy.

12 (Jury excused from the courtroom.)

13 THE COURT: Okay. Is there anything we
14 have to discuss in wrapping up?

15 MR. MANGO: No, your Honor, not from the
16 Government.

17 MR. LINSIN: No from Tonawanda Coke, your
18 Honor.

19 MR. PERSONIUS: No, your Honor. Thank
20 you.

21 THE COURT: All right. Thank you for your
22 cooperation. Enjoy your weekend. We'll see you on
23 Monday at what time?

24 MR. MANGO: 9:15.

25 MR. PERSONIUS: Thank you, your Honor.

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CERTIFICATION

I certify that the foregoing is a
Correct transcription of the proceedings
Recorded by me in this matter.

s/Michelle L. McLaughlin
Michelle L. McLaughlin, RPR
Official Reporter
U.S.D.C., W.D.N.Y.